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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

No. 1307.

THOMAS RYAN, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MICHIGAN.

FILED OCTOBER 9, 1889.

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1 United States Circuit Court, Western District of Michigan, Northern Division.

THE UNITED STATES
vs.
THOMAS RYAN. } No. 210.

To the within-named defendant:

Take notice that on filing a declaration in this cause (of which the within is a true copy) as commencement of suit a rule was entered in the book of common rules kept by the clerk of said court in his office, in the city of Marquette, requiring you to plead to said declaration within twenty days after service upon you of a copy thereof and notice of said rule, or judgment, etc.

Yours, &c.,
G. CHASE GODWIN,
U. S. Attorney, Attorney for Plaintiff.

Filed June 8th, 1888.

F. M. MOORE,
Deputy Clerk.

2 *Narr.*

UNITED STATES OF AMERICA,
Western District of Michigan, } *ss:*

The Circuit Court of the United States for the Sixth Circuit and Western District of Michigan, Northern Division, of the May Term, A. D. 1889.

Now comes The United States of America, through Augustus H. Garland, the Attorney General of the United States of America, by G. Chase Godwin, United States attorney for the western district of Michigan, plaintiff's attorney, and files this declaration as commencement of suit; and thereupon said United States of America complains of Thomas Ryan, who is a citizen of the United States of America and a resident of Sault Ste. Marie, within the northern division of the western district of Michigan aforesaid, as defendant herein in a plea of ejectment, filing this declaration, pursuant to the statute, as commencement of suit.

For that whereas the said plaintiff, The United States of America, was, on, to wit, the first day of June, A. D. 1888, possessed of the following real estate and premises, situated in the county of Chippewa, in the said northern division of the western district of Michigan, and within the jurisdiction of this court, and being known and described as follows: The southeast quarter of the southeast quarter of section one, in town. forty-seven north, of range one west, containing forty acres of land, more or less, according to the Government sur-
3 vey thereof, the same being a part of private land claim number two, in the village of Sault Ste. Marie, except a strip off the south side of said land thirty-three feet in width reserved for

Esterday avenue; also the southwest quarter of the southwest quarter of section six, in town. forty-seven north, of range one east, containing forty acres, more or less, according to the Government survey thereof, the same being a part of private land claim number ninety-three, in the village of Sault Ste. Marie, except the strip off the south side of said land thirty-three feet in width reserved for Esterday avenue, and also except a strip off the east side thereof thirty-three feet in width reserved for street purposes, the same being the land conveyed to the United States by Thomas Ryan and wife by deed dated December 18, 1886, recorded in the office of the register of deeds of the county of Chippewa and State of Michigan on the 25th day of May, 1887, in Liber 19, at page 340; which said premises the plaintiff, The United States of America, claims in fee simple; and the said plaintiff being so possessed thereof, the said defendant, Thomas Ryan, afterwards, to wit, on the first day of June, A. D. 1888, entered into said premises and unlawfully withholds from the said plaintiff, The United States of America, the possession thereof, to the damage of the said plaintiff, The United States of America, one hundred thousand dollars, and therefore plaintiff brings suit.

G. CHASE GODWIN,
U. S. Attorney for the Western District of Michigan,
Attorney for Plaintiff.

4 WESTERN DISTRICT OF MICHIGAN, *ss:*

I do hereby certify that on the — day of June, A. D. 1888, I served the within declaration, together with a notice of the rule to plead endorsed thereon, upon Thomas Ryan, at Sault Ste. Marie, in said northern division of said western district of Michigan, by delivering to him a true copy of the notice of the rule to plead entered in this cause, of which said notice a copy is endorsed as is upon this copy of the declaration, by delivering the same to him in person at said Sault Ste. Marie.

——— ———,
United States Marshal,
By ——— ———,
Deputy United States Marshal.

5 *Rule to Plead.*

UNITED STATES OF AMERICA:

The Circuit Court of the United States for the Western District of Michigan, Northern Division.

THE UNITED STATES OF AMERICA
vs.
THOMAS RYAN. } Ejectment.

On filing declaration in this cause as commencement of suit, according to the statute in such case made and provided, and on motion of G. Chase Godwin, attorney for plaintiff, ordered that said

defendant appear and plead to said declaration within twenty days after service upon him of a copy thereof and notice of this rule, or judgment, &c.

June 8th, 1888.

G. CHASE GODWIN,
Att'y for Plaintiff.

F. M. MOORE, *Dep. Clerk.*

6 Plea filed July 14th, 1888.

F. M. MOORE, *Dep. Clerk.*

BRENNAN & DONNELLY,
Att'ys for Def't.

The Circuit Court of the United States for the Western District of Michigan, Northern Division.

THE UNITED STATES OF AMERICA
vs.
THOMAS RYAN.

And now comes the said defendant, by Brennan & Donnelly, his attorneys, and demands a trial of the matters set forth in the plaintiff's declaration.

BRENNAN & DONNELLY,
Attorneys for Defendant.

July 12th, 1889.

7 At a session of the circuit court of the United States for the sixth circuit and western district of Michigan, northern division, continued and held at the United States court-rooms, in the city of Marquette, in said district and division, on Tuesday, the seventeenth day of July, in the year one thousand eight hundred and eighty-nine, and of the Independence of the United States the one hundred and fourteenth.

Present: The Honorables Henry F. Severens and George R. Sage, district judges, the latter sitting pursuant to designation and appointment by the Honorable Howell E. Jackson, circuit judge.

UNITED STATES OF AMERICA
vs.
THOMAS RYAN. } No. 210.

This cause coming regularly on for trial, the following jury was called and sworn, to wit: A. Samuel Parks, Levi Beemer, John W. Jochim, George W. Williams, Ira Carley, John W. Depew, George Brisbin, Michael Bresohan, John Wilson, M. J. C. Pierce, Fred. J. Eggan, and Thomas Byrnes; and thereupon, on application and by consent of the parties to this cause, it is ordered that W. S. Goodale be, and he hereby is, appointed reporter in this cause; that a transcript of his stenographer's notes shall constitute the official record of the testimony taken in this cause.

And thereupon the said jury sat together in the jury seats and heard the evidence in this cause and the arguments of counsel in part.

The court adjourned until July 18th.

8 THURSDAY, *July 18th, A. D.* 1889.

The court met pursuant to adjournment.

Present: The Honorables Henry F. Severens and George R. Sage, district judges.

UNITED STATES OF AMERICA
vs.
THOMAS RYAN. } No. 210.

The jury heretofore empanneled in this cause sat together in the jury seats and heard the conclusion of the arguments of counsel.

The court adjourned until July 19th.

FRIDAY, *July 19th, A. D.* 1889.

The court met pursuant to adjournment.

Present: The Honorables Henry F. Severens and George R. Sage, district judges.

THE UNITED STATES OF AMERICA
vs.
THOMAS RYAN. } No. 210.

The jury heretofore empanneled in this cause sat together in the jury seats and heard the charge of the court, and thereupon, without leaving their seats, by direction of the court, say upon their oath that the said defendant is guilty of unlawfully withholding from the said plaintiff the premises described in its declaration in this cause as the southeast quarter of the southeast quarter of section one,
9 in town. forty-seven north, of range one west, containing forty acres of land, more or less, according to the Government survey thereof, the same being a part of private land claim number two, in the village of Sault Ste. Marie, except a strip off of the south side of said land thirty-three feet in width reserved for Easterday avenue; also the southwest quarter of the southwest quarter of section six, in town. forty-seven north, of range one east, containing forty acres, more or less, according to the Government survey thereof, the same being a part of private land claim number ninety-three, in the village of Sault Ste. Marie, except the strip off the south side of said land thirty-three feet in width reserved for Easterday avenue, and also except a strip off the east side thereof thirty-three feet in width reserved for street purposes, the same being the land conveyed to the United States by Thomas Ryan and wife by deed dated December 18th, 1886, recorded in the office of the register of deeds of the county of Chippewa and State of Michigan on the 25th day of May, 1887, in Liber 19, at page 340, and that the said plaintiff is well entitled to hold the same in fee, as the said plaintiff hath in its said declaration complained against him, the

said defendant, and they assess the damages of the said plaintiff over and above its costs and charges by it about its suit in this behalf expended at the sum of six cents.

Therefore is it considered that the said plaintiff do recover against the said defendant the possession of the said premises, and that it have a writ of possession therefor according to the force, form, and effect of its said recovery; and it is further considered that the said plaintiff do recover against the said defendant its damages by the jurors in form aforesaid assessed, together with its costs and charges aforesaid, to be taxed, and that the said plaintiff have execution thereof.

10 And thereupon, on application of counsel for the said defendant, it is ordered that the said defendant be, and he hereby is, granted sixty days from this date in which to prepare and settle a bill of exceptions in this cause, and that in the meantime all further proceedings on the part of the plaintiff in this cause, except the taxation of costs, be, and the same are hereby, stayed.

11 The Circuit Court of the United States for the Northern Division of the Western District of Michigan.

THE UNITED STATES OF AMERICA
vs.
THOMAS RYAN.

Bill of Exceptions.

Brennan & Donnelly, att'ys for def'd't.
Filed Sept. 30th, 1889.

F. M. MOORE,
Deputy Clerk.

12 At a session of the circuit court of the United States for the northern division of the western district of Michigan, continued and held at the city of Marquette, on the seventeenth day of July, A. D. 1889.

Present: Hon. Henry F. Severens, district judge.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
THOMAS RYAN, Defendant.
} Ejectment.

The above cause being at issue came on to be tried before said court and a jury.

G. Chase Godwin and Willard Kingsley appeared for the plaintiff, and Brennan & Donnelly and Isaac Marston appeared for the defendant.

Counsel for the plaintiff, to maintain the issues on its part, introduced and read in evidence various written orders, propositions, deeds, letters, telegrams, petitions, communications, opinions, and documents, hereinafter recited in this bill of exceptions, all of which instruments were written, sent, and received in regular course of

business by the departments, boards, officials, and individuals mentioned in the various and respective documents.

Counsel for the plaintiff first offered in evidence the following:

Special Order No. 186.

HEADQUARTERS OF THE ARMY,
ADJUTANT GENERAL'S OFFICE,
WASHINGTON, *August* 12, 1886.

By direction of the Secretary of War, and to further the execution of so much of the act of Congress approved July 8, 1886, as provides "for the sale of the old site of Fort Brady, Michigan, and for a new site, and the construction of suitable buildings thereon," a board of officers—to consist of Lieutenant Colonel Henry L. Abbot, corps of engineers; Lieutenant Colonel Orlando M. Poe, corps of
13 engineers; Major Thomas Ward, assistant adjutant general; Captain James Marshall, assistant quartermaster—is appointed to meet at Fort Brady, Michigan, on Tuesday, September 7th, 1886, or as soon thereafter as practicable, for the purpose hereinafter specified, viz:

1st. To select for purchase the suitable and sufficient grounds indicated in the fourth section of that act.

2nd. To consider and give its opinions, with the reasons therefor, upon the advisability of reserving for the purpose specified that portion of the present reservation described in the fifth section of the act.

3rd. To cause to be surveyed and platted under its direction and supervision the present reservation, with the exceptions specified in the third section of the act, after which it will appraise for sale the lots so platted, and submit, with its report of proceedings, to the adjutant general a map of the required survey and platting, with the appraised value of each lot indicated thereon.

The board will report by telegraph to the adjutant general, with its recommendation for the approval of the Secretary of War, so soon as it shall have selected the new site.

The commanding officer of Fort Brady will place at the disposition of the board all the facilities at his command in its aid for the purposes above enumerated.

Upon the final adjournment of the board the members thereof will join their proper stations.

14 The travel enjoined is necessary for the public service.

By command of Lieutenant General Sheridan.

R. C. DRUM,
Adjutant General.

Official.

——— ———,
Assistant Adjutant General.

WILLIAM B. CADY, a witness produced, sworn, and examined on the part of the plaintiff, testified as follows:

Examined by Mr. KINGSLEY:

Mr. Cady, will you please state your full name?
William B. Cady.
What is your business?
Banker.
In the fall of 1886 what was your business, and where were you living?
I was practicing law at Sault Ste. Marie.
A member of a firm or practicing individually?
I was a member of a firm at that time.
What was the name of your firm?
Cady & Cady.
Do you know Mr. Thomas Ryan?
I do.
Are you acquainted with this property in litigation? You have heard the statement of counsel concerning it.
Yes, sir; I am.
Prior to September 7, 1886, when did you last see Mr. Ryan personally?
My recollection would be that it was some time between the third and the fifth of September, at Detroit.
Where did Mr. Ryan live at that time?
Mr. Ryan lived at Sault Ste. Marie.
Was he at the Sault from the 3rd until the 7th or 8th of September?
I don't think that Mr. Ryan returned to the Sault from
15 Detroit until about some time from the 10th to the 15th.
When you saw him in Detroit at the time you mention did you have any conversation with him in regard to the meeting of this board of officers at the Sault in relation to the selection of a site for the fort?
Yes, sir.
Please state what that was.
Mr. Ryan and myself were both cognizant of the fact that the meeting of the board had been called, and the conversation which we had touching the matter was purely general. Mr. Ryan's property had been mentioned for a number of years, not only in military circles, but by citizens, as a possible site for a fort, and general conversation was had.
What was the general tenor of the conversation?
That it would be a desirable point, and that Mr. Ryan would submit his property to the Government at that time.
Had you, prior to that time, been acting for Mr. Ryan as his advisor—attorney?
I had been acting for Mr. Ryan since April, 1884, as local attorney.
Was it then understood at the time that you had your conversation in Detroit that you were to return to the Sault?

It was understood that I was to return to the Sault.

When did you return?

I took the boat some time between the third and the fifth, as I stated. It takes one day to reach the Sault from Detroit. My recollection is that I reached the Sault on the 6th, and I think it was the day that the board first met, although the correspondence by telegraph between Mr. Ryan and myself did not take place until later than that.

16 Plaintiff offered and read in evidence the following telegram:

SAULT, *Sept. 7th*, 1886.

To Thomas Ryan, Michigan Exchange Hotel, Detroit, Mich.:

Telegraph price to me of southwest quarter of southwest quarter of section 6 and southeast quarter of southeast quarter of section 1 for Fort Brady. Answer immediately.

W. B. CADY.

Counsel for plaintiff read in evidence a telegram as follows, the same being in answer to the above:

DETROIT, MICH., *Sept.* 7, 1886.

To W. B. Cady, Soo:

Twelve thousand dollars.

THOMAS RYAN.

Plaintiff read in evidence the following:

SAULT STE. MARIE, *Sept.* 8, 1886.

To the hon. the board of survey.

SIRS: I am instructed by Mr. Ryan to offer the S. W. ¼ of S. W. ½ of sec. 6 and the S. E. ¼ of the S. E. ¼ of sec. 1 (both in towns. 47 N., of R's 1 E. & W.), containing eighty (80) acres, more or less, if sold together, for the sum of twelve thousand dollars ($12,000).

Although not authorized yet, I assume that Mr. Ryan would sell any portion of said lands at a price in ratio to the above (*i. e.*, $150 per acre).

THOMAS RYAN,
By W. B. CADY.

17 P. S.—The above offer is subject to the opening of Easterday avenue along the south line.

Q. These telegrams were submitted to the board by you?

Yes, sir.

Q. Were there some other propositions submitted besides this one?

There were.

Counsel for plaintiff read in evidence the following:

FORT BRADY, MICH., *Sept.* 9, 1886.

Adjutant general, U. S. Army.

SIR: I have the honor to forward a copy of telegram sent this day, as follows:

FORT BRADY, MICH., *Sept.* 9, 1886.

Adjutant general of the army, Washington, D. C.:

The board recommends for purchase the two adjoining forty-acre tracts on the hill, half mile due south of west end of canal, divided through the center of length by meridian of Sault Ste. Marie, aggregating about seventy-five acres; price, twelve thousand dollars.

Very respectfully your obedient servant,

HENRY L. ABBOT,
Lt Col., Corps of Engineers, President of Board of Officers.

The endorsement on the above is as follows:

WAR DEPARTMENT, *Sept.* 11, 1886.

Under ordinary circumstances action in this case would
18 have been deferred until the return of the Secretary of War or the Lieutenant General.

In view, however, of the importance of the selection of this site, and of the fact that inaction here would delay further action by the board, which is now in Michigan awaiting reply, the recommendation of the board as contained in the within telegram is approved.

The board will be advised by telegraph of such approval.

R. C. DRUM,
Act'g Sec'y War.

The plaintiff then read in evidence the following telegram:

HEADQUARTERS OF THE ARMY,
ADJ'T GEN. OFFICE, WASHINGTON, *Sept.* 11*th*, 1886.

Lieu. Col. H. L. Abbot, Sault Ste. Marie, Mich.:

Despatches nine (9) and eleven (11) instant received. The Secretary of War approves the recommendation of board for purchase of two (2) tracts designated at the price of twelve thousand dollars ($12,000). Acknowledged receipt. No further instructions.

J. C. KELTON,
Acting Adjutant General.

Counsel for plaintiff read in evidence the following:

FORT BRADY, MICH., *Sept.* 11, 1886.

Thomas Ryan, Sault Ste. Marie, Mich.

SIR: You are hereby notified that the acting Secretary of War has approved the recommendation of the board of officers now in session at this post, that your proposal, dated September 8th, 1886, be accepted, viz., for the sale of certain tracts of land described in

your proposal as follows, the S. W. ¼ of the S. W. ¼ of sec. 6 and the S. E. ¼ of the S. E. ¼ of sec. 1, subject to the opening of Easterday avenue along the south line, for twelve thousand dollars.

Very respectfully, your obedient servant,

HENRY L. ABBOT,

Lieutenant Colonel of Engineers, President of the Board.

Mr. MARSTON: Is there any evidence that — was delivered to Mr. Ryan?

Mr. KINGSLEY: This, we understand, was delivered not to Mr. Ryan, but to Mr. Cady.

19 The WITNESS: That is a fact.

By the secretary of the board?

By Captain Marshall; yes, sir.

Where?

At Sault Ste. Marie.

At this date?

I am not certain; what is the date of that?

Q. 11th.

A. It was about that date. It was delivered to me personally by Captain Marshall.

Q. Please state what you did with this communication that was served upon you by the secretary.

Upon Mr. Ryan's return I delivered the communication to him or read it to him; I think it remained in my possession.

About how long was that after you received it before you delivered it to Mr. Ryan?

I should judge it was three or four days, to the best of my recollection.

Will you state about this reservation of Easterday avenue along the south side contained in your proposition and this acceptance?

Mr. MARSTON: In the acceptance by the Government, as telegraphed back by the Secretary of War, I notice there was no such reservation. Now, what his idea may have been I don't know nor care.

Mr. KINGSLEY: I will ask this question of this witness:

20 How you came to put in your proposition, excepting a right of way for Easterday avenue along the south line, mentioned in that written proposition to the board.

Mr. MARSTON: That I object to as immaterial.

The COURT: It would be competent to show what authority, if any, he had from Mr. Ryan, wouldn't it?

Mr. MARSTON: Yes, your honor.

Mr. KINGSLEY: We will waive the question at present.

The COURT: In giving a history of this matter ought not all the facts come in?

Mr. MARSTON: I have no objection. I will withdraw the objection.

The WITNESS: I think it appears on the face of the bid that I submitted that the reservation of Easterday avenue comes in as a

postscript, and I think perhaps it came in in this way: I prepared the bid in my office, and on the way to the place where the board met (it was the Post library) I met Mr. Chandler. He offered a certain forty acres of land lying east of the eighty offered by Mr. Ryan. At that time there was being opened through the city an east-and-west street known as Easterday avenue. That street had been opened up to Ashland street, or nearly to certain properties owned by Mr. Chandler, and he was submitting a bid in which he had reserved 33 feet and a fraction for the purpose of opening the street, and asked me to reserve the same in my bid. I therefore tore open a sealed envelope in which I had the bid and added a postscript.

He also asked me to reserve a certain other street, which I did not do.

21 Counsel for plaintiff read in evidence the following letter from the acting Secretary of War to Colonel Poe:

SEPTEMBER 30, 1886.

The recommendation of the board, approved by the Department, selects a tract of about 75 acres of land at Sault Ste. Marie, owned by Thomas Ryan, as the new site for Fort Brady, at the proposed price of $12,000. Papers on file show Mr. Ryan's address to be Michigan Exchange Hotel, Detroit. Please take the proper steps without delay to collect and forward to this Department the necessary deeds and other title papers for the conveyance of this land to the United States for examination by the Attorney General, as required by law. General orders 47, h'dq'rs of army, A. G. O., of 1881, publishes regulations of the Department of Justice concerning such title papers, a copy of which will be forwarded to you by mail.

(Signed) R. C. DRUM,
Acting Sec'y of War.

Counsel for plaintiff read in evidence the following:

SAULT STE. MARIE, MICH., *Oct.* 4, '86.

Hon. adjutant general U. S. Army, Washington, D. C.

SIR: On the 11th ulto. Mr. Thomas Ryan, of Sault Ste. Marie, Mich., was notified by Henry L. Abbot, lieutenant colonel of engineers, president of board, that his offer of certain lands as a site for Fort Brady had been accepted.

I have the honor of acting for Mr. Ryan in preparing his
22 title for the Attorney General. Will you please furnish me with a copy of the printed directions for preparing abstracts for the use of the Government?

Any communications relative to the matter should be addressed to W. B. Cady, Sault Ste. Marie, Mich.

I am, most respectfully, yours, W. B. CADY.

Counsel for plaintiff read in evidence as follows:

UNITED STATES ENGINEER'S OFFICE,
34 CONGRESS STREET WEST,
DETROIT, MICH., *October* 6, '86.

Thomas Ryan, Esq., Sault Ste. Marie, Mich.

SIR: I have received from the War Department the following letter of instructions, viz: (See letter of Sept. 30, 1886, on preceding page.) I have therefore to request that you will proceed as rapidly as possible with the preparation of the requisite papers, and to aid you in this I enclose herewith a copy of general orders No. 47, headquarters of the army, adjutant general's office, May 13, 1881, above referred to.

Please acknowledge receipt of this communication and inform me as to how soon you can begin the preparation of the papers in question.

Very respectfully, your obedient serv't,

O. M. POE,
Lieutenant Colonel of Engineers, B'v't Brig. Gen., U. S. A.

23 General order No. 47, above referred to, was offered in evidence, marked "Exhibit A," and is as follows:

EXHIBIT A.

General Orders 47.

HEADQUARTERS OF THE ARMY,
ADJUTANT GENERAL'S OFFICE,
WASHINGTON, *May* 13, 1881.

By direction of the Secretary of War the following regulations of the Department of Justice concerning title papers are published for the information of all concerned:

DEPARTMENT OF JUSTICE, *October* 27, 1875.

The following regulations have been prepared for the convenience of those who may have occasion to draw conveyances, make abstracts, or collect evidence of title to lands in case where it may be the duty of the Attorney General to certify concerning the validity of title. A strict observance of them will greatly facilitate the examination as well as tend to correct conclusions:

I. The deed from the vendor to the United States and their assigns must be acknowledged according to the laws of the State, district, or territory where the land lies.

II. A plot or draft of the land should be furnished showing the boundary lines, their courses and distances, and the adjoining owners, streets, rivers, or other waters.

III. Where the property proposed to be sold consists of more than one piece, the titles to which are derived through different persons, the dividing lines must be traced on the draft and the separate pieces distinctly marked.

24 IV. It is necessary to have an accurate and full abstract of the title, showing the transmission from the original source to the vendor, with each transfer noted in the proper order of time, the name of each grantor and grantee written at length, with dates showing when the several conveyances were executed, acknowledged, and recorded. This abstract must note every fact on which the validity of the title depends, whether it be proved by matter of record, by deed, or *en pais*.

V. The abstract must be verified by being accompanied either with the original documents it refers to or else with copies legally authenticated.

VI. The title papers must all be marked with numbers corresponding to the numbers under which they are arranged in the abstract.

VII. When an estate in the land has passed by devise the will and the probate must be shown, and if the devisee is not named proof of his identity will be required.

VIII. Where it has descended from an intestate ancestor to his heirs satisfactory proof of the condition and number of the decedent's family must be given.

IX. If the estate has passed by a judicial sale or by a sale under the order of any court or if it has been divided by proceedings in partition the regularity of the sale or partition must be shown by a copy of the record.

X. The foreclosure of a mortgage can be shown only by an authentic copy of the proceedings had for that purpose.

XI. When the wife of a grantor has not joined in a deed some evidence must be given that he was unmarried at the time, or that his wife is since dead.

25 XII. If the grantor be a woman it must be shown that she was unmarried at the date of the deed from her.

XIII. When a deed is executed by the heirs of a person within twenty-one years after his death evidence will be required to show that they were of full age at the time of the grant.

XIV. When the title has passed through a corporate body the charter must be produced and the authority of the officer who granted away the estate must be shown.

XV. When the estate has been conditional it will be necessary to furnish clear proof that the conditions have been fulfilled or lawfully excused.

XVI. When the title depends on statute law other than the public laws of the United States, upon a local law differing from the general rule of the common law, upon a public document, or upon history the books relied on to establish it should be accurately referred to and the page noted.

XVII. Presumptions arising from the lapse of time will be allowed the weight given to them by the judicial tribunals of the State where the land lies. An apparent defect in an old deed need not be explained if the possession of the property has been according to such deed for thirty years or upwards.

XVIII. A title offered to the United States will not be regarded as invalid on account of an outstanding title which has been barred

by a legal limitation; but in all cases where time is relied on to extinguish an outstanding title the party must show by clear proof, not only an adverse possession for the full period, but also that there are no persons who have rights that may be saved by exceptions to the statute.

XIX. Searches must accompany the abstract of title, showing whether the land is or is not affected by incumbrances or liens of any kind, such as mortgages, deeds of trust, judgements, unpaid taxes, etc.

XX. Before sending the papers to this office for examination they should be submitted to the attorney of the United States for the district in which the land lies. It will be his duty to certify an opinion on the whole title and to state particularly whether the local laws are correctly given, the papers properly authenticated, and the facts established by satisfactory proof.

EDWARDS PIERREPONT,
Attorney General.

By command of General Sherman.

R. C. DRUM,
Adjutant General.

Official.

——— ———,
Assistant Adjutant General.

26 Mr. KINGSLEY: In the letter of instructions issued by the Department of Justice one of the requirements is that the deed from the vendor to the United States shall be executed according to the laws of the State where the land is; and, second, "before sending the papers to this office for examination they shall be submitted to the district attorney in the district in which the land lies." I think those are the only two particular phases of the order that we care about.

The COURT: Is there a provision of law by which the Secretary is authorized to make those articles?

Mr. KINGSLEY: They were published by the Department of Justice; then the Department of War seems to have republished them by command of General Sherman.

It appeared that this letter of October 6th from General Poe to Mr. Ryan was sent to Mr. Wheeler at the Sault, he being assistant engineer there, directing him to deliver it to Mr. Ryan personally, and it was so delivered.

Mr. BRENNAN: We admit the reception of the letter by Mr. Ryan.

Mr. Cady, concerning this letter of General Poe, addressed to Mr. Ryan, enclosing this order, did you ever see it?

Yes, sir; it came into my possession from Mr. Ryan with the order.

About when?

I should presume very soon after the date of the letter or
27 its receipt by Mr. Ryan; some time early in October.

Counsel for plaintiff read in evidence the following:

OCTOBER 13, 1886.

Gen. O. M. Poe.

SIR: I have the honor to acknowledge your favor of the 6th inst. to Thomas Ryan. I am acting for Mr. Ryan in preparing his title for the inspection of the Attorney General. I expect to be able to send on the necessary papers in from six to eight weeks.

Yours very respectfully, W. B. CADY.

To O. M. Poe, lieut. engineer, b't brig. gen., U. S. A., Detroit, Mich.

Counsel for plaintiff read in evidence the following:

UNITED STATES ENGINEER'S OFFICE,
DETROIT, MICH., *Dec.* 10, 1886.

W. B. Cady, Esq., Sault Ste. Marie, Mich.

SIR: Two months ago I had the honor of receiving information that you expected to send me in six or eight weeks the title papers to the Ryan property purchased by the United States for a new site for Fort Brady. I thought you rather sanguine, and am therefore not surprised that the time has passed without receipt of the papers by me.

However, you may have made such progress that you may now be able to say when they can be forwarded. Please let me hear from you in regard to the matter, and oblige,

Yours very respectfully, O. M. POE,
Lt. Col. of Engineers, B'v't Brig. Gen., U. S. A.

28 Counsel for plaintiff read in evidence the following:

SAULT STE. MARIE, MICH., *Dec.* 11, '86.

Gen. O. M. Poe, Detroit.

SIR: Your favor of the 10th inst. is at hand. I have met unexpected delay in obtaining certain papers from the supreme court of this State; received same by this morning's mail, and if they are correct and satisfactory I shall have papers ready by the 20th inst.

If I understand directions I am to first send papers to G. Chase Godwin, U. S. district attorney for this district. Do you wish them first sent to you? Also, should the deed from Ryan to the Government be recorded before forwarding?

Will you honor me by answering the above questions at once? I expect to start for Detroit on the 20th inst., and if you wish to see the papers I will bring them down for your examination and send to Mr. Godwin from Detroit.

Your obed't servant, W. B. CADY.

During this time, from October, when Mr. Ryan turned over the letter and enclosed order, up until December 20th, what were you doing in regard to collecting papers?

I was busy, practically, all the time at the work of collecting the

papers and getting the necessary title papers together—that is, perfecting the title.

Did you meet with any difficulties?

We met with some quite marked delay.

I see by your letter that you notified General Poe that
29 you expected to be in Detroit with the papers about Dec. 20th. When did you go there?

I think I reached Detroit the morning of the 22nd.

Where did you go?

I saw Gen. Poe.

At the engineer's office?

Yes, sir.

Did you have the papers with you at that time?

I did during the day; yes, sir.

What did you do next with them?

I think, if you will allow me to say, that at that time there were two of the papers that were not with the mass of papers that I had. They were the deeds from Mr. Ryan to the Government. I don't think that at that time I had them with me, but I had all the rest of the papers. After a rather cursory examination of the papers by General Poe I took them to Grand Rapids, stopping off a day, I think, at Ann Arbor, my home.

Counsel for plaintiff read in evidence the following:

U. S. ENGINEER'S OFFICE, 34 WEST CONGRESS STREET,
DETROIT, MICH., *Dec.* 22, 1886.

G. Chase Godwin, Esq., U. S. dist. att'y, Grand Rapids, Mich.

SIR: In accordance with paragraph XX of the circular of the Attorney General of the United States, dated October 27th, 1875, W. B. Cady, Esq., attorney for Mr. Thomas Ryan, of Sault Ste. Marie, Mich., visits you for the purpose of submitting the title papers to a tract of land which the Government desires to purchase for a new site for Fort Brady. The War Department is anxious to complete the transaction as soon as possible, and your early action would greatly facilitate matters.

Very respectfully your obedient servant,

O. M. POE,
Lt. Col. of Eng'rs, B'v't Brig. Gen. U. S. A.

30 With this letter you went to Grand Rapids?

I carried that letter to Grand Rapids.

What did you do there—at Grand Rapids?

I visited Mr. Godwin, the U. S. district attorney.

Did you see Mr. Godwin personally or his assistant, Mr. Adsit?

I saw Mr. Godwin personally at that time, to the best of my recollection. At a a subsequent time I saw Mr. Adsit.

What conversation did you have there in regard to the papers?

I delivered the papers, and we had some cursory conversation touching the points of title—touching some points between Mr. Godwin and myself.

What papers did you then leave with him?

I left the entire mass of papers, to the best of my recollection, excepting the deeds from Mr. Ryan.

Those papers consisted of abstracts, etc.?

Abstracts, certified copies of deeds, maps, etc.

What conditions, if any, verbal or otherwise, did you make on the delivery of these papers to Mr. Godwin?

There was none whatever.

Counsel for plaintiff read in evidence the following:

SAULT STE. MARIE, MICH., *Dec.* 22, 1886.

To the hon. the adjutant general U. S. A., Washington, D. C.

SIR: Herewith please find inclosed, relating to Thomas Ryan sale to the Government, as follows:

1. Abstracts of title to the two parcels included in sale.

2. Tax abstracts of the two parcels included in sale.

31 3. Three exhibits, being (1) affidavit of Guy H. Carleton; (2) map of premises included in sale, with affidavit of Guy H. Carleton; (3) certified copies of the records in circuit court of Chippewa county, in chancery, and of supreme court of Michigan in suit of Ripley, etc., *vs.* Thomas Ryan *et al.*

4. Deed of Thomas Ryan *et ux.* to U. S. to carry out above sale.

5. Authority of Thomas Ryan and E. K. Roberts, cashier, relating to your draft, etc.

All correspondence relative to above sale you will kindly address to—

Your obedient servants, CADY & CADY,
Sault Ste. Marie, Mich.

Mr. Cady, what about that letter?

My impression about that letter is that in the haste of preparing the papers and preparing to leave the city I asked George A. Cady, who was my partner at that time and who had had no connection with the preparation whatever, to prepare a letter of submittal, and that that letter in some way became connected with the papers. That had no bearing whatever. In fact the papers were actually delivered, with another letter written by myself. That is the only case, I think, in which the firm name appears, and in that case it was used by Mr. Cady, who was acting as my partner, although he had not acted in this matter.

That is the letter of Dec. 22nd that I have just read?

Yes, sir; it is extraneous matter.

32 Counsel for plaintiff read in evidence the following:

DETROIT, *Jan.* 3, 1887.

G. Chase Godwin, Esq., U. S. dist. att'y, Grand Rapids.

SIR: I inclose deed, etc., in the Ryan sale. This makes papers complete. I would respectfully call your attention to the following:

1st. I inclose two deeds of lands in question—one in exact con-

formity to Mr. Ryan's bid, the other reserving a strip of land 33 feet wide off east side for street purposes.

2nd. That the dower right, if any, of Mrs. Warner is cut off by the State tax deeds held by Mr. Ryan.

Most respectfully asking you to consider the paper at as early a date as possible and to communicate to me the results, I submit the papers to your inspection.

In conversation with General Poe to-day he seemed quite certain that the papers would be sent to him after your examination of them, and that he should send them to the War Department, you sending your report to the Attorney General.

Would you kindly inform me what course you have decided to follow in the matter?

I remain your obedient servant, W. B. CADY.

33 What about that letter of January 3rd?

That letter accompanied the two deeds, to the best of my recollection, that had been forwarded from Mr. Cady at the Sault to myself in Detroit.

Those signed by Ryan and wife?

Yes, sir.

They supplemented the deeds and maps—certified copies of deeds and abstracts that had been delivered to Mr. Godwin earlier?

Yes, sir.

Did you go to Grand Rapids with this letter or send it by post?

Of that I am not positive. I went to Grand Rapids—no; that must have gone by mail. I did not go to Grand Rapids until the 17th or 18th of January.

It was under this letter that you delivered the deeds to Godwin?

It was in that letter.

Did you attach any other conditions?

Nothing whatever. It all appears there.

How did Mr. Ryan come to execute these two deeds, and where did he do it?

He executed them at the Sault, at his residence, I think.

Did you have any conversation with him at the time?

Nothing, only general conversation.

What was the purport of the general conversation?

As following out the printed instructions of the Government.

Counsel for plaintiff offered in evidence the following deed:

Warranty Deed.

This indenture, made this eighteenth (18) day of December, in the year of our Lord one thousand eight hundred and eighty-
34 six, between Thomas Ryan and Anne E. Ryan, his wife, of the village of Sault Ste. Marie and State of Michigan, of the first part, and the United States of America, of the second part, witnesseth:

That the said parties of the first part, for and in consideration of the sum of twelve thousand dollars ($12,000) to them in hand paid

by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, do by these presents grant, bargain, sell, remise, release, alien, and confirm unto the said party of the second part and its assigns forever all those certain pieces or parcels of land situate and being in the village of Sault Ste. Marie, county of Chippewa and State of Michigan, known and described as follows, to wit: The southeast quarter of the southeast quarter of section one (1), in town. forty-seven (47) north, of range one (1) west, forty acres more or less, according to the Government survey thereof, the same being part of private land claim number two (2), in the village of Sault Ste. Marie, except a strip off the south side of said land thirty-three (33) feet in width, reserved for Easterday avenue; also the southwest quarter of the southwest quarter of section six (6), in town. forty-seven (47) north, of range one (1) east, forty acres, more or less, according to the Government survey thereof, the same being a part of private land claim number ninety-three (93), in the village of Sault Ste. Marie, except a strip off the south side of said land thirty-three (33) feet in width, reserved for Easterday avenue, and also except a strip off the east side thereof thirty-three (33) feet in width, reserved for street purposes; together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise
35 appertaining; to have and to hold the said premises as above described, with the appurtenances, unto the said party of the second part and to its assigns forever. And the said Thomas Ryan and Anne E. Ryan, parties of the first part, for themselves and for their heirs, executors, and administrators, do covenant, grant, bargain, and agree to and with the said party of the second part and its assigns that at the time of the ensealing and delivery of these presents they are well seized of the above-granted premises in fee simple, that they are free from all incumbrances whatever, and that they will and their heirs, executors, and administrators shall warrant and defend the same against all lawful claims whatsoever.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

THOMAS RYAN. [L. S.]
ANNE E. RYAN. [L. S.]

Signed, sealed, and delivered in the presence of—
MARGARET M. ROYCE.
W. B. CADY.

STATE OF MICHIGAN, }
County of Chippewa, } *ss:*

On this eighteenth day of December, in the year of our Lord one thousand eight hundred and eighty-six, before me, W. B. Cady, a notary public in and for said county, personally appeared Thomas Ryan and Anne E. Ryan, his wife, to me known as the same persons described in and who executed the within instrument, who severally acknowledged the same to be their free act and deed.

[NOTARY SEAL.]

W. B. CADY,
Notary Public, Chippewa County, Mich.

36 The following is the certificate of the recording of above deed, which is endorsed on said deed, viz:

Thomas Ryan & wife to the United States.

REGISTER'S OFFICE, } ss:
Chippewa County, }

Received for record this 25th day of May, A. D. 1887, at 8 o'clock p. m., and recorded in Liber 19 of Deeds, on page 340.

GEO. W. BROWN, *Register.*

After you delivered the papers to the U. S. district attorney at Grand Rapids was there any further delay or any other trouble concerning the title or any suggestions made by the district attorney?

Some time towards the latter part of January or the first of February I received a letter from Mr. Godwin, the U. S. district attorney, asking for certain further information affecting what was known as the Warner dower—that is my recollection—and also asking for a further or different discharge of a mortgage held by the Citizens' Bank of Detroit. I think those two (and the latter principally) were the points raised.

You furnished him those papers?

37 Those were furnished about the middle of February, I think.

Were those the last papers that you were called upon to furnish?

Those were the last papers that I was called upon to furnish.

Counsel for plaintiff read in evidence the following letter from the United States district attorney for the western district of Michigan:

GRAND RAPIDS, MICH., *March* 18, 1887.

To the Attorney General, Washington, D. C.

DEAR SIR: I enclose herewith abstracts and copies of conveyances in the matter of title to the lands at Sault Ste. Marie which the Government proposes to buy in connection with Fort Brady. I also enclose opinions marked No. 1 and No. 2, in which I have explained, so far as I am able to do, the situation. That the title to these lands is sufficient I have little doubt.

I also enclose the affidavit of Carleton with reference to the circumstance that Ebenezer Warner left a widow. It is reported that Ebenezer Warner lived with a woman who was not his wife, and she is now old, and there is something like a neighborhood talk that she is liable to make claim to dower in this land. Our inquiries lead us to believe that this woman has no right, but of course, as you observe, this is a question of fact that I am not able to determine.

However, the widow's interest at her age would be very petty.

I enclose also some transcripts from the records with reference to the chancery cases referred to in notice of *lis pendens* filed.

I also enclose affidavits of Mr. Ryan, furnished me, for
38 what they are worth, that you may have before you all the papers that I have had which bear upon the question of title.

A warranty deed has been handed me to the United States. It is in the usual form, a general warranty deed of title, and is enclosed herewith, and so far as form is concerned it is correct.

The map referred to in the opinion is enclosed herewith.

I also enclose, annexed to the deed, authority from Thomas Ryan that the payment may be made and transmitted to Cady & Cady, attorneys, Sault Ste. Marie, Mich.

Yours very respectfully, G. CHASE GODWIN.

It appeared that this report was sent at this time, March 18, 1887, to General Poe, at Detroit.

The court here adjourned until 2 o'clock p. m.

Afternoon session—two o'clock p. m.

Counsel for plaintiff read in evidence the following:

GRAND RAPIDS, *March* 19, 1887.

W. B. Cady, Esq., Sault Ste. Marie, Mich.

DEAR SIR: Yours of the 16th inst. received. The abstract and accompanying papers in the matter of the title to the Fort Brady reservation proposed site have been forwarded to General Poe, together with my opinion regarding the same.

I have recommended and advised that the title is good and complete.

Yours, &c., G. CHASE GODWIN,
U. S. Attorney,
By ALLEN ADSIT, *Assistant.*

39 Counsel for plaintiff read in evidence the following:

U. S. ENGINEER OFFICE, DETROIT, MICH., *March* 19, 1887.

To the hon. the Secretary of War, Washington, D. C.

SIR: In obedience to telegraphic instructions of September 30th, 1886, I have the honor to transmit herewith the necessary deeds and other title papers for the conveyance of a tract of about 75 acres of land at Sault Ste. Marie, owned by Thomas Ryan, selected as the new site for Fort Brady.

The delay in forwarding these papers has arisen from the endeavor to cover all defects of titles. In this I advised Mr. Ryan's attorney to consult Hon. G. Chase Godwin, U. S. district attorney for the district in which Sault Ste. Marie is situated, who has endeavored to hasten the matter as much as possible by sending his written opinion as to the validity of the title proposed to be conveyed by Ryan to the United States without waiting for the official reference of the papers to him.

This courteous action is duly appreciated by me.

I am, sir, very respectfully, your obedient servant,

O. M. POE,
L't Col. of Engineers, B't Brig. Gen., U. S. A.

40 Counsel for plaintiff read in evidence the following:

WAR DEPARTMENT,
WASHINGTON CITY, *March* 28, 1887.

SIR: I have the honor to enclose for your consideration abstracts of title to the lands at Sault Ste. Marie, Michigan, which the Government proposes to purchase as the site of Fort Brady, together with a map of the premises, a deed of conveyance to the United States of the parcels of land in question from Thomas Ryan and Anne E. Ryan, an opinion of Hon. G. Chase Godwin, U. S. district attorney, dated the 17th inst., respecting the title to the said lands, and other accompanying papers bearing on the question of title.

I beg to request that you advise this Department as to the validity of the title to the lands in question, and whether the enclosed deed is sufficient to vest the title in the United States.

Please return the inclosed papers with your reply.

Very respectfully, your obedient servant,

WILLIAM C. ENDICOTT,
Secretary of War.

To hon. the Attorney General.

Counsel for plaintiff read in evidence the following:

DETROIT, *April* 1, 1887.

Hon. William C. Endicott, Secretary of War, Washington, D. C.

SIR: Mr. Thomas Ryan, of Sault Ste. Marie, in this State, with whom your Department had some negotiations some months ago for the purchase of the S. W. ¼ of the S. W. ¼ of section 6, the
41 S. E. ¼ of the S. E. ¼ of section 1, in said town., as a site for Fort Brady, has instructed us to say that he has arranged for a different disposition of the property, and further negotiations are unnecessary. Will you please return to him all papers submitted to the Government concerning said property.

Very truly yours, BRENNAN & DONNELLY.

Counsel for plaintiff read in evidence the following:

WAR DEPARTMENT, *April* 5, 1887.

Respectfully referred to the Lieutenant General for remark.

The title papers to the property at Sault Ste. Marie proposed to be purchased by the Government from Thomas Ryan and wife were sent to the Attorney General on the 28th ultimo. A copy of this letter has this day been sent to the Attorney General in connection with the title papers above mentioned.

WM. C. ENDICOTT,
Secretary of War.

Counsel for plaintiff read in evidence the following:

DEPARTMENT OF JUSTICE,
WASHINGTON, *April* 9, 1887.

SIR: In compliance with your request of the 5th inst. I have the

honor to return herewith the papers referred to therein relating to certain lands at Sault Ste. Marie, Mich., which it was contemplated to purchase for the purpose of a new site for Fort Brady.

In connection with this matter I also transmit an account of the U. S. attorney for the western district of Michigan for professional services rendered in the investigation of the title to the lands above mentioned.

42 I am, sir, very respectfully,

A. H. GARLAND,
Attorney General.

The Secretary of War.

Counsel for plaintiff read in evidence the following:

WAR DEPARTMENT,
WASHINGTON CITY, *April* 16, 1887.

SIR: In connection with Department letter to you of the 28th ultimo, inclosing for your consideration a deed of conveyance to the United States of certain parcels of land at Sault Ste. Marie, Michigan, which the Government proposes to purchase as the site of Fort Brady, together with accompanying papers bearing upon the question of title, I have the honor to acknowledge the receipt of your letter of the 9th instant, returning the papers referred to.

In reply I beg to state that the return of the papers in question was not desired at this time by this Department, and I again transmit them to you with the request that you favor me with your opinion as to the validity of the title to the lands in question, whether the inclosed deed is sufficient to vest the title in the United States, and whether there is a sufficient agreement in writing to bind Mr. Ryan, notwithstanding his attempted withdrawal from his agreement.

Very respectfully, your obedient servant,

WM. C. ENDICOTT,
Secretary of War.

The hon. the Attorney General.

Counsel for plaintiff offered & read in evidence a letter from the Attorney General to the Secretary of War, dated May 18, 1887, in which he again returns (together with his opinion) all papers
43 above referred to. By this letter it appeared that on May 18th, 1887, the Attorney General returned the papers to the Secretary of War, with his written opinion that the deed from Ryan and his wife is sufficient to pass title to the United States, provided nothing affecting the title has transpired since signing the deed. In this opinion the Attorney General said:

"Upon examination of these papers I find that a valid title to said land (*i. e.*, the premises hereinbefore described) is thereby deduced to Thomas Ryan, of that place (Sault Ste. Marie), and I am of the opinion that the accompanying deed of conveyance from him and his wife to the United States, dated December 18th, 1886, which is offered for the acceptance of the Government, is sufficient to pass a

valid title to the premises, assuming, of course, that nothing affecting the title to the property has transpired since the date of the deed. Information on this point should be obtained before completing the purchase price by having the searches for liens, incumbrances, etc., continued down to the present time."

44 Counsel for plaintiff offered in evidence the following:

WASHINGTON, *May* 19, 1887.

G. C. Godwin, Esq., U. S. attorney, Grand Rapids, Mich.

SIR: I transmit herewith a deed of Thomas Ryan and wife, dated December 18th, 1888, granting to the United States certain property at Sault Ste. Marie, Mich. You are hereby instructed to continue the search for liens, encumbrances, etc., against this property from the date of the deed down to the present time, and should the title be found to be unaffected thereby and to remain unchanged you are instructed to have the deed recorded, after which payment of the purchase-money will be made in the usual way through the War Department.

Please attend to this promptly and report your doings under these instructions as early as practicable.

I am, sir, very respectfully,

A. H. GARLAND,
Att'y General.

Counsel for the plaintiff read in evidence the following from the United States district attorney:

GRAND RAPIDS, MICH, *May* 28, 1887.

To the Attorney General, Washington, D. C.

DEAR SIR: Following your order contained in your letter of May 19, 1887, I immediately on receipt of the same went to Sault Ste. Marie and gave further attention to the examination of the title of the land deeded to the United States Government by Thomas Ryan and wife.

I found upon investigation that he had got a deed from one Anne E. Warner, who made claim of dower, but which claim had no

45 force, I thought, but I found that on the 4th of April Thomas Ryan and wife deeded to the village of Sault Ste. Marie a strip of land 40 feet wide off the east side of the southwest quarter of the southwest quarter of section 6 and 40 feet off the west side of the southeast quarter of the southeast quarter of section 1, making together a strip 80 feet wide, for street purposes. I hereto attach a slip, with the land marked out, showing you wha thas been done to affect the title to the land. Notwithstanding all this, I recorded the deed running to the United States.

Perhaps I should explain further. Since this land was contracted to the Government a very remarkable business boom has struck Sault Ste. Marie, and Mr. Ryan claims that the land deeded to the Government is worth fifty or sixty thousand dollars. He has made a claim that the Government was dealing with the expectation of purchasing it, and assuming that it had not been accepted as yet,

but was under consideration by the Government, while I supposed you had accepted his offer to sell the land for $12,000. This being the situation, I took the responsibility of recording the deed, notwithstanding that 80 feet had been deeded away, thinking that it would be the safest way to secure the Government, as the property is unquestionably worth more than $12,000, although the conveyance of this street should be valid.

There is no doubt that the village officers knew of such contract when made, and no doubt exists in my mind but the village officers prefer that the Government should own this property.

46 The facts seem to be that Thomas Ryan had other lands adjoining this or in the vicinity which he had sold for fabulous prices, and he has no doubt promised to other parties the opening of this street, and in pursuance of this fact has made this deed.

As this now stands the title of the land is in the Government, except only that Ryan has conveyed away this 80-foot strip. I shall be pleased to take any steps that may be directed in this matter.

Yours very respectfully,

G. CHASE GODWIN.

Counsel for plaintiff read in evidence the following :

DEPARTMENT OF JUSTICE,
WASHINGTON, D. C., *June* 9, 1887.

SIR: I herewith transmit a copy of a letter received from the U. S. attorney for the western district of Michigan, dated the 28th ult., together with the slip therein mentioned in relation to certain land situated in Sault Ste. Marie, Mich., which has been selected as a site for Fort Brady, and of which a deed to the United States was executed by Thomas Ryan and wife December 18, 1886.

It appears that since the date of that deed and before the same was recorded, namely, on the 4th of April, 1887, the said Ryan and wife deeded a small part of the premises to the village of Sault Ste. Marie for the purpose of a street. Notwithstanding this, the U. S. attorney thought it advisable to put the deed to the United States on record.

By the law of Michigan an unrecorded deed is "void as
47 against any subsequent purchaser in good faith and for a valuable consideration of the same real estate or any portion thereof whose conveyance shall be first duly recorded." If the conveyance to the village has been first duly recorded and is otherwise within the provision of law just adverted to, its title to so much of the premises as is granted thereby would doubtless be superior to a title derived under the deed to the United States. However, should the use of that part of the premises for the purpose of a street be unobjectionable, the failure to derive title thereto under such deed may be unimportant.

I am, sir, very respectfully, A. H. GARLAND,
Attorney General.

The Secretary of War.

It appeared that on June 24, 1887, the Lieutenant General recommended that the ground be not purchased unless the 80-foot right of way referred to be given up by the village.

And on June 28, 1887, the recommendation of the Lieutenant General was approved and the papers referred to Colonel Poe, chief of engineers, to ascertain if the village would relinquish the strip 80 feet wide.

Counsel for plaintiff read in evidence the following:

U. S. ENGINEER'S OFFICE,
DETROIT, *July* 27, 1887.

Respectfully returned with copy of correspondence with the president of the village of Sault Ste. Marie, comprising my letter to him dated June 30, 1887, and his reply dated July 12th.

Finding the latter somewhat obscure, and intending to
48 visit Sault Ste. Marie about the 20th, I delayed further inquiry in the hope that a personal interview with the village president would enable me to ascertain exactly his meaning. Owing to his absence I was disappointed in this, but in conversation with some of the citizens of the place I was informed that it was hopeless to expect any favorable action from the village council as at present constituted, and that it was this that the village president referred to in his remark that "from the present outlook it (the reconveying) can hardly be accomplished at this session of the council."

Whether a new council would be more favorably disposed no one can tell. I was informed at Sault Ste. Marie that when the proposition to reconvey was before the council Mr. Thomas Ryan (the seller) was permitted to appear before that body and oppose the reconveyance, and I presume he would do so again. His course in this is consistent, as it is apparently a part of the plan adopted to force the Government to abandon this and select some other site, to the end that he (Ryan) may reap the advantage of the remarkable increase in the value of the property since its purchase by the Government.

The village authorities appear to have been used in furtherance of the scheme, but I am not prepared to say that they were aware of the fact at the time the conveyance was accepted.

O. M. POE,
Col. of Engineers.

49 Counsel for plaintiff offer and read in evidence the following:

Quitclaim Deed.

This indenture, made the fourth (4) day of April, in the year of our Lord one thousand eight hundred and eighty-seven, between Thomas Ryan and Annie E. Ryan, his wife, of Sault Ste. Marie, Mich., of the first part, and the village of Sault Ste. Marie, a municipal corporation organized under the laws of the State of Michigan, of the second part, witnesseth:

That the said parties of the first part, for and in consideration of the sum of one dollar (the lands hereby conveyed to be named re-

spectively "Ryan avenue" and "Meridian avenue") to them in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, do by these presents grant, bargain, sell, remise, release, and forever quitclaim unto the said party of the second part and to its successors and assigns forever all those certain pieces or parcels of land situated in the village of Sault Ste. Marie, in Chippewa county and State of Michigan, known and described as follows:

A strip of land forty feet in width off the east side of the southwest quarter of the southwest quarter of section six, town. forty-seven north, range one east; also a strip of land forty feet in width off the west side of the southwest quarter of the southwest quarter of section six; also a strip of land forty feet in width off the east side of the southeast quarter of the southeast quarter of section one, town. forty-seven north, of range one west, all of which
50 above-described strips of land extend from South street on the north to Easterday avenue on the south, in said village of Sault Ste. Marie.

Together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining; to have and to hold the said within-described premises to the said party of the second part and to its successors — assigns, to the sole and only proper use, benefit, and behoof of the said party of the second part, its successors and assigns, forever.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

THOMAS RYAN. [L. S.]
ANNE E. RYAN. [L. S.]

Signed, sealed, and delivered in the presence of—
JAMES R. RYAN.
W. B. CADY.

STATE OF MICHIGAN, }
County of Chippewa, } *ss:*

On this fourth day of April, in the year one thousand eight hundred and eighty-seven, before me, the subscriber, a notary public in and for said county, personally appeared Thomas Ryan and Anne E. Ryan, to me known to be the same persons described in and who executed the within instrument, who severally acknowledged the same to be their free act and deed.

W. B. CADY,
Notary Public, Chippewa County, Mich.

Thomas Ryan and wife to village of Sault Ste. Marie.

REGISTER'S OFFICE, }
Chippewa County, } *ss:*

51 Received for record the 12th day of April, A. D. 1887, at five o'clock p. m., and recorded in Liber 17 of Deeds, on page 340.

GEORGE W. BROWN, *Register.*

It further appeared that on November 25, 1887, the Secretary of War and General Sheridan held a conference and decided to await further action of the village council of Sault Ste. Marie, that the rights of the United States should be maintained, and that payment must be withheld until the roadway is relinquished to the Government, thus making the title of the United States good to the whole tract conveyed by the deed of Thomas Ryan to the United States.

Counsel for plaintiff then read in evidence a deed from the village of Sault Ste. Marie to the United States, dated May 22, 1888, relinquishing and quitclaiming to the United States all the rights that the village obtained from Ryan and wife under the deed of the 4th day of April, 1887, being the one last above mentioned.

It was admitted for the purposes of the trial by counsel for both sides that Major Adams obtained the consent of the city authorities or an understanding that they would make this relinquishment before he made the tender, but that the tender was really made the day before the relinquishment was made by the council; that Major Adams came to the village of Sault Ste. Marie, went before the members of the common council, had an understanding with them that if he made the tender of $12,000 to Ryan they would relinquish these two pieces, and the next night after the tender was
52 made they passed the resolution, and then made the deed which relinquished to the United States all the rights which the village had acquired from Ryan & wife in & to any of the lands in controversy here.

Counsel for the plaintiff offers in evidence the following petition to the President of the United States:

Petition.

To the President of the United States:

Your petitioner, Thomas Ryan, of Sault Ste. Marie, Chippewa county, Michigan, respectfully represents:

I. That he is being deprived of certain of his property by the Government of the United States without due compensation and without due process of law, and in violation of his legal and constitutional rights, under the circumstances set forth in the following paragraphs:

II. That on the 9th day of September, 1886, and for a long time prior thereto, he was the owner in fee of the following-described lands, situate in the county of Chippewa aforesaid, to wit: The southeast quarter of the southeast quarter of section one (1), in town forty-seven (47) north, range one (1) west, and the southwest quarter of the southwest quarter of section six (6), in town forty-seven (47) north, range one (1) east.

III. That on the 8th day of July, 1886, an act of Congress was approved which provided for the vacation and sale of the present Government reservation at Sault Ste. Marie, occupied as a site for the existing Fort Brady at that point, and for the purchase of a new site for a military post at that point, a copy of which act is hereto at-

tached and marked Exhibit "A," and for greater certainty as to its provisions your petitioner refers thereto.

53 IV. That your petitioner is informed and believes that the Secretary of War appointed a board, composed of officers of the army, to select a site for the new post, which board met at Sault Ste. Marie and selected the above-described property as a site at the price of twelve thousand dollars, to be paid in cash, and the action of said board was approved by the Secretary of War.

V. That subsequently, and at the request of the War Department, your petitioner prepared a deed of said property, duly signed the same, and, together with a complete abstract of title of the premises, deposited the same with the district attorney for the western district of Michigan for examination only, and subject to such changes and modifications as the Government desired, and not as a final delivery which bound your petitioner to sell and convey or the Government to buy the land and pay therefor; that this depositing of the papers with the said district attorney took place in the month of December, 1886.

VI. That up to this time nothing had been done by either the Government or your petitioner which in law bound either party to carry out the negotiations for the purchase and sale of the property; that either party had the right at any time to withdraw from the matter; that a copy of said deed is hereto attached and marked Exhibit "B."

VII. That under the provisions of section 355 of the Revised Statutes of the United States it was necessary to obtain the consent of the Legislature of the State of Michigan and the written opinion of the Attorney General on the validity of the title before the

54 Government could acquire any title to the site, as your petitioner is advised and verily believes.

That although the Legislature of Michigan was in session from the first Wednesday in January until some time during the month of June, 1887, no effort was made by the Government to obtain its consent, nor was any opinion in writing filed by the Attorney General until some time during the month of May, 1887.

VIII. That the Department failed to take any action in the matter which indicated its intention to finally purchase said property, and your petitioner, deeming that neither party was bound by the proceedings, duly notified the Secretary of War that so far as he was concerned he considered the whole matter at an end, and requested the return to him of the deed and all papers referring to the title which had been deposited with the district attorney for examination.

That said notice was in writing and was given by Brennan & Donnelly, of Detroit, his regular counsel, under express instructions given them by your petitioner; that a copy of said notice is hereto attached and marked Exhibit "C;" that for some reason unknown to your petitioner no response or acknowledgment was made by the Secretary of War or any person for him of or to said notice; that said notice was written and mailed to said Secretary of War on the day it bears date; that, not having received any response to the same, said Brennan & Donnally, acting on behalf of your petitioner, wrote

and mailed to the Secretary of War a letter, a copy of which
55 is hereto attached and marked Exhibit "D;" that the same was written and mailed on the day it bears date; that no response of any kind has been received to said Exhibit "D," nor has either of said letters been returned to the writers thereof.

IX. That after the giving of said notice it was the petitioner's right to have said deeds and papers returned to him, and the Government had no right to retain the same; but your petitioner alleges that in violation of your petitioner's rights the Government retained said papers, and afterwards and on or about the 25th day of May, 1887, caused the same to be placed on record in the office of the register of deeds for said county of Chippewa, where the same now stands; that no payment or tender of payment has been made to your petitioner of any sum of money for said lands, nor can any payment be made therefor, as your petitioner is advised, without violating the provisions of law.

X. That said land has increased greatly in value in the market since September, 1886, and the same is now worth at least sixty thousand dollars.

XI. That your petitioner has remained in possession of said lands, and, as he verily believes, is the rightful owner thereof; that the recording of said deed has created a cloud on your petitioner's title and he is entitled to have said deed cancelled; that he is without any remedy through the ordinary channels, and can only obtain relief through the action of the executive of the United States in directing the cancellation of said deed or the reconveyance by the Government of the said lands to your petitioner, and this action he most respectfully asks you to take.

56 STATE OF MICHIGAN, }
County of Chippewa, } *ss:*

Thomas Ryan, being duly sworn, doth depose and say that he has read the foregoing petition by him subscribed and knows the contents thereof, and that the same is true, except as to those matters therein stated to be on information and belief, and as to those matters he believes it to be true.

THOMAS RYAN.

Subscribed and sworn to before me this 14th day of September, 1887.

MICHAEL J. DOYLE,
Notary Public, Chippewa County, Mich.

STATE OF MICHIGAN, }
County of Wayne, } *ss:*

John C. Donnelly, being duly sworn, doth depose and say that he is a member of the law firm of Brennan & Donnelly, practicing attorneys in the city of Detroit; that said firm have for many years last past been acting as legal counsel for Thomas Ryan, of Sault Ste. Marie; that at the instance and request of said Thomas Ryan and for him and in his behalf deponent wrote and sent to the Secretary

of War the original letters, copies of which are attached to the petition of Thomas Ryan to the President of the United States, for the cancellation of a certain deed of lands in Sault Ste. Marie, Chippewa county, in this State; that no reply has been received by said Brennan & Donnelly to either of said letters, nor has any acknowledgment of their receipt by the Secretary of War ever been made. Further deponent saith not.

JOHN C. DONNELLY.

Subscribed and sworn to before me this 27th day of September, A. D. 1887.

L. H. COLLINS,
Notary Public, Wayne Co., Mich.

57 To the President of the United States:

Your petitioner, Thomas Ryan, of Sault Ste. Marie, Chippewa county, Michigan, presents this his supplemental petition for the cancellation of the deed on record to the United States from your petitioner.

I. That while absent from Sault Ste. Marie and in the city of Detroit on business he received a telegram from William B. Cady, Esq., dated September 7th, 1886, asking your petitioner what he would take for the land described in said deed; that a copy of said telegram, as near as petitioner can recollect, is hereto attached, marked Exhibit "A;" that to said telegram your petitioner sent the following answer, "Twelve thousand dollars;" that on the following day said William B. Cady filed a proposal with the board of officers, offering said land as a site for Fort Brady; that your petitioner is informed and believes said proposal is now on file in the office of the Secretary of War, at Washington, and that said telegram from your petitioner to said Cady is attached to the proposal so filed with the said Secretary of War; that on the 11th day of September he received from the president of said board a communication with reference to said matter, a copy of which is hereto attached and marked Exhibit "B;" that afterwards he received from Lieutenant Col. O. M. Poe a communication with reference to said matter, a copy of which is hereto attached and marked Exhibit "C;" that a copy of general order No. 47, referred to in and inclosed with Exhibit "C," is hereto attached and marked Exhibit "D;" that a reply to Exhibit "C" was sent by said W. B. Cady, a copy of which is
58 hereto attached and marked Exhibit "E."

II. Your petitioner further shows that a number of citizens of Sault Ste. Marie petitioned the common council of said village for the opening of a certain street, called Meridian street, in said village; a copy of said petition is hereto attached and marked Exhibit "F;" that subsequently your petitioner, believing the Government did not intend to take said land, and having failed to take the necessary steps to obtain the consent of the Legislature of the State, as provided by the act of Congress, your petitioner deeded to the village of Sault Ste. Marie two certain streets through said land by deeds duly executed and delivered to said village, one dated the

21st day of March, 1887, and recorded in the office of the register of deeds for Chippewa county on the 23rd day of March, 1887, in Liber 17 of Deeds, page 311, the other dated the 4th day of April, 1887, and recorded in the office of the register of deeds for Chippewa county on the 12th day of April, 1887, in Liber 17 of Deeds, page 340; that copies of said deeds are hereto attached and marked, respectively, Exhibits "G" and "H;" that said village of Sault Ste. Marie accepted said deeds and entered upon and *have* taken possession of said streets, and money has been expended in the improvement of the same.

III. That subsequently, under date of June 30th, 1887, Lieutenant Colonel Poe, under instructions from the War Department, applied to the president and common council of the village of Sault Ste. Marie for a relinquishment to the Government of the United States of the right of way and streets conveyed by Exhibits "G" and "H;" that a copy of said application is hereto attached and marked Exhibit "I;" that afterwards, at the regular meeting of the common council of the village of Sault Ste. Marie, said application was considered and acted upon, and the said common council by a unanimous vote declined to grant said application or to vacate said streets or surrender the claim of the village thereto to the Government; that a transcript of the proceedings of said council is hereto attached and marked Exhibit "J."

59

IV. That the only authority and instruction that Cady had from your petitioner to act in his behalf was by parol.

THOMAS RYAN.

STATE OF MICHIGAN, } ss:
County of Chippewa, }

Thomas Ryan, being duly sworn, doth depose and say that he is the above-named petitioner; that he has read the foregoing petition by him subscribed and knows the contents thereof, and that the same is true except as to those matters therein stated to be upon information and belief, and as to those matters he believes it to be true.

THOMAS RYAN.

Subscribed and sworn to before me this 20th day of September, 1887.

MICHAEL J. DOYLE,
Notary Public, Chippewa Co., Mich.

Counsel for plaintiff offered in evidence the opinion of the Attorney General on the foregoing petitions addressed to the Secretary of War, dated April 16, 1888.

DEPARTMENT OF JUSTICE,
WASHINGTON, *April* 16, 1888.

60 The Secretary of War.

SIR: In compliance with the request contained in your letter to me of the 6th of February last I have considered the petition of

Mr. Thomas Ryan, of Sault Ste. Marie, Michigan, for the cancellation of a deed executed by himself and wife December 18, 1886, granting to the United States certain land in that place. From that letter, the papers submitted therewith, and other sources I gather the following facts:

The act of July 8th, 1886, chap. 747, authorized the Secretary of War to purchase a new site for Fort Brady in or near the village of Sault Ste. Marie, Michigan, provided the title thereto should be approved by the Attorney General. Subsequently a board of army officers was appointed to select such site, and among other proposals received by it was the following:

(See proposal of Thomas Ryan by W. B. Cady, Sept. 8, 1886, to board of survey, hereinbefore set forth in this bill of exceptions.)

The board having recommended the purchase of the property described in this proposal, the acting Secretary of War, on the 11th of September, 1886, telegraphed his approval thereof, and Mr. Ryan was thereupon notified by the president of the board of the acceptance of his offer, the notice being in writing as follows:

(See letter of Henry L. Abbot to Thomas Ryan, Sept. 11, 1886.)

Afterwards Mr. Ryan received a letter requesting the speedy preparation of his title papers, of which the following is a copy:

(See letter of O. M. Poe to Thomas Ryan, dated Oct. 6, 1886.)

To the foregoing letter the following response was made:

(See letter W. B. Cady to O. M. Poe, dated Oct. 13, 1886.)

61 In the latter part of December, 1886, an abstract of title and other papers, including a deed of the above-described premises to the United States, executed by Ryan and his wife, dated December 18th, 1886, were sent by W. B. Cady to General Poe, who thereupon transmitted all the papers to the U. S. attorney for the western district of Michigan, with a request that he examine the title to the property.

On the 28th of March, 1887, the Secretary of War transmitted these title papers, accompanied by an opinion of the U. S. attorney thereon, dated the 17th of same month, to the Attorney General, with a request for his advice "as to the validity of the title to the lands in question and whether the inclosed deed is sufficient to vest the title in the United States." Before the question of title had been passed upon by the Attorney General a letter was received by him from the Secretary of War, dated April 5, 1887, inclosing a copy of a letter from Messrs. Brennan & Donnelly, of Detroit, Michigan, which reads as follows:

(See letter Brennan & Donnelly to Secretary of War, dated April 1, 1887.)

On receipt of the last-mentioned letter of the Secretary the papers were returned to him by the Attorney General without other action; but by another letter, dated the 16th of same month, the Secretary of War resubmitted the title papers to the Attorney General, with request for his opinion as to the validity of the title, &c. In response to this request an opinion was rendered by the Attorney General on the 18th of May, 1887, as follows:

"Upon examination of these papers I find that a valid title
62 to said lands (*i. e.*, the premises hereinbefore described) is thereby deduced to Thomas Ryan, of that place (Sault Ste. Marie), and I am of the opinion that the accompanying deed of conveyance from him and his wife to the United States, dated December 18, 1886, which is offered for the acceptance of the Government, is sufficient to pass a valid title to the premises, assuming, of course, that nothing affecting the title to the property has transpired since the date of the deed. Information on this point should be obtained before completing the purchase by having the searches for liens, incumbrances, &c., continued down to the present time."

On the following day, at the desire of the War Department, the Attorney General transmitted the deed of Ryan and wife, hereinbefore mentioned, to the U. S. attorney for the western district of Michigan, for the purpose of having the same put on record. Accompanying the deed were the following instructions to the U. S. attorney:

"You are hereby instructed to continue the search for liens, incumbrances, &c., against the property from the date of the deed down to the present time, and should the title be found to be unaffected thereby and to remain unchanged you are further instructed to have the deed recorded, after which payment of the purchase-money will be made in the usual way through the War Department."

The said deed of Ryan and wife was recorded on the 25th day of May, 1887. In the letter to the Attorney General touching this subject, dated the 28th of same month, the U. S. attorney states:

(See letter G. Chase Godwin, district attorney, to Attorney General, dated May 28, 1887.)

63 June 9th, 1887, the Attorney General addressed a communication to the Secretary of War transmitting a copy of the aforesaid letter of the U. S. attorney, together with the slip therein mentioned. In that communication the following remarks were made:

"It appears that since the date of the deed and before the same was recorded, namely, on the 4th of April, 1887, the said Ryan and wife deeded a small part of the premises to the village of Sault Ste. Marie for the purpose of a street. Notwithstanding this the U. S. attorney thought it advisable to put the deed to the United States on record.

"By the law of Michigan an unrecorded deed is 'void' as against any subsequent purchaser in good faith and for a valuable consideration of the same real estate or any portion thereof whose conveyance shall be first duly recorded.

"If the conveyance to the village has been first duly recorded and is otherwise within the provision of law just adverted to its title to so much of the premises as is granted thereby would doubtless be superior to a title derived under the deed to the United States. However, should the use of that part of the premises for the purpose of a street be unobjectionable the failure to derive title thereto under such deed may be unimportant."

The following statement containing additional facts is taken from the letter of the Secretary of War of February 6, 1888, hereinbefore referred to:

"The Lieutenant General recommended, June 24th, that the ground be not purchased unless the roadway referred to be given up to the United States by the village authorities.

64 "The papers were referred to Col. Poe to ascertain if the village authorities would relinquish the roadway.

"July 27, 1887, Col. Poe reported that he had written to the president of the village of Sault Ste. Marie, and is informed that it is hopeless to expect favorable action by the present village council on the request for reconveyance of the strip of land mentioned.

"The Secretary of War and General Sheridan held a conference Nov. 25, 1887, and decided to await further action of the village council of Sault Ste. Marie; that the rights of the United States should be maintained, and that payment must be withheld until the roadway is relinquished to the Government, thus making the title of the United States good to the whole tract conveyed by the deed of Thomas Ryan to the United States.

"It is proper to add that it is the desire of this (the War) Department to secure the tract of land in accordance with the terms offered by Mr. Ryan September 8, 1886."

The deed of Ryan and wife to the village, referred to above, was recorded April 12, 1887. With the exception of so much thereof as is granted by that deed the entire tract has remained in his possession.

The petitioner, Thomas Ryan, claims that prior to the date of his letter to the Secretary of War requesting the return of the title papers (April 1, 1887) no contract existed between him and the Government by which either was bound; that the sale and purchase of the property were still in negotiation; that those papers, including the deed of himself and wife, of December 18, 1886, were

65 submitted for examination merely; that until approval of the title by the Attorney General and acceptance of the deed by the Government he was at liberty to withdraw from the matter, and that before the title was approved or the deed accepted he withdrew therefrom. He further claims to be still the rightful owner of the premises; states that the recording of said deed has created a cloud upon his title, and asks that the deed be cancelled.

The inquiry presents itself at the very outset whether any valid and binding agreement for the sale of the land was concluded between the United States and Mr. Ryan prior to the execution and delivery of his deed into the hands of the Government agents. By the statement of facts hereinbefore set forth it appears that the premises were offered for sale to the United States by the agent of Ryan for a certain sum, and that the offer was accepted on the part of the Government, the acceptance being subject, of course, to the condition required by the statute that the title should be approved by the Attorney General. (See the correspondence of Sept. 8, 1886, and Sept. 11, 1886, *supra.*)

Thereupon, in order to meet the statutory requirements just

adverted to, Ryan was requested by the Government agent to proceed as rapidly as possible with the preparation of the requisite papers, which request his agent acknowledged, signifying an intention to comply therewith. (Correspondence of October 6, 1886, and October 13, 1886.) This is substantially the evidence appearing in the case which has any bearing upon the inquiry under consideration.

Mr. Ryan claims, under these facts, that because Mr. Cady, his agent, was not "lawfully authorized" by him to make the
66 contract in pursuance of which he made the deed to the United States that the whole transaction is void, as being within the provisions of section 6181 of Michigan statutes, which is substantially a re-enactment of a part of the English statute of frauds. The facts do not seem to justify the application of the principle he contends for. The deed signed, sealed, acknowledged, and delivered by Mr. Ryan to his agent to deliver to the United States which the agent did actually deliver, raised a sufficient presumption of ratification, if the original contract were material. The delivery of the deed to the agent, in pursuance of the contract which he made in the name of his principal, would certainly relieve the agent from the consequences of his alleged unauthorized acts, and make the acts of the agent those of the principal. (Story on Agency, section 244, and notes.) The delivery of the deed by the agent to the Government is *prima facie* a full execution of the contract, and passed a complete title. The possession of a deed by the vendee is presumptive evidence of delivery.

The recording of the deed also gives rise to the same presumption. To overcome the effects of the possession of the deed by the vendee and the recording of it, it would be incumbent on the grantor to establish affirmatively that the delivery was not made. When a deed is passed from a grantor to the grantee, whether the change of possession of the instrument shall be regarded as a delivery is to be determined from the intent of the parties.

In Devlin on Deeds, section 289, it is stated that "The true
67 rule would seem to be that when the grantor has parted with all control of the deed its acceptance by the grantee may be presumed, if it be beneficial to him."

In the case of Hatch *vs.* Hatch (9 Mass., 309) Justice Sewell declares:

"The delivery is an essential requisite to a deed, and the effect of it is to be from the time when it is delivered as a deed, but it is not essential to the valid delivery of a deed that the grantee be present and that it be made through or accepted by him personally at the time. A writing delivered to a stranger for the use and benefit of the grantee to have effect after a certain event or the performance of some condition may be delivered either as a deed or as escrow. The distinction, however, seems almost entirely nominal when we consider the rules of decision which have been resorted to for the purpose of effectuating the intentions of the grantor or the obligor in some cases of necessity. If delivered as an escrow and not in name as a deed it will, nevertheless, be regarded and construed as

a deed from the first delivery, as soon as the event happens or the condition is performed upon which the effect has been suspended, if this construction should be then necessary in furtherance of the lawful intention of the parties."

The performance of the facts in this case seems to show the grantor had parted with all control of the deed. It was never to be returned to him except on the condition prescribed by law—that if the Attorney General should declare the title defective, then the whole transaction, whether existing in parole or established
68 by legal written evidence, should be void. This condition, being public law, entered into and constituted a condition subject to which every step in the proceedings was taken. The condition was not made by the parties nor for the benefit of the grantor, but for the protection of the Government. The grantor could not take advantage of it and rescind a sale otherwise lawfully made whenever his whim or interest might suggest such a course. When the Attorney General passed upon the title as good, this condition, fixed by law, was performed and the delivery became absolute and unconditional. Under the facts submitted the title to the land seems to be vested in the United States. The deed having been recorded, the title cannot be revested in the vendor without a decree of the court or congressional authorization. The proper course to be pursued, it is suggested, would be to determine what was the value of the street conveyed by the vendor to the village of Sault Ste. Marie before the recording of the deed to the United States, and after substracting that amount from the whole consideration in the deed pay or tender the balance of the purchase-money to the vendor and take possession of the land.

I am yours respectfully, A. H. GARLAND,
Attorney General.

It was admitted that Mr. Ryan was and is in possession of the property in controversy.

69 Counsel for plaintiff read in evidence the following:

WAR DEPARTMENT, WASHINGTON CITY, *May* 26, 1888.

SIR: Referring to my letter of this date in regard to the new site for Fort Brady, Michigan, I have the honor to inclose certificate of Major H. M. Adams that he tendered $12,000 to Thomas Ryan in presence of a witness on the 22d instant, and a letter from George W. Brown, Esq., mayor of the city of Sault Ste. Marie, Michigan, stating that the city has conveyed the roadway through the new site to the United States.

In accordance with your oral suggestion I beg to request that you take such steps as may be deemed proper to obtain possession of the land conveyed to the United States by Thomas Ryan on December 18, 1886.

Very respectfuily, your obedient servant,
WILLIAM C. ENDICOTT,
Secretary of War.

The honorable the Attorney General.

Counsel for plaintiff read in evidence the following:

WAR DEPARTMENT, WASHINGTON CITY, *May* 26, 1888.

SIR: Referring to your opinion of the 16th ultimo, that the title to the land at Sault Ste. Marie, Mich., conveyed by a deed executed by Thomas Ryan and wife, dated December 18, 1886, seems to be vested in the United States, I beg to invite attention to my note to you of the 17th instant and to your reply of the same date, and to state that the sum of $12,000 has been tendered to Thomas
70 Ryan and he has refused to accept it. I have the honor, therefore, to request your opinion whether the War Department should now take possession of the land conveyed to the United States by the above-mentioned deed from Thomas Ryan and wife, and what should be the method of doing so.

Very respectfully, your obedient servant,

WILLIAM C. ENDICOTT,
Secretary of War.

The honorable the Attorney General.

A letter from the Attorney General to the district attorney, instructing him to bring this action, was read in evidence.

Defendant admitted the tender of the $12,000 on May 22, 1888, to him by the United States.

Mr. KINGSLEY: Mr. Cady, you acted as attorney in selling these lands to the Government or making the negotiations, whatever was done. I would like to have you tell us up to what time you acted in that capacity?

I don't remember the exact date that I ceased to have any connection with the matter, but I apprehend it was towards the last of March or about the first of April; I think about the time that Messrs. Brennan & Donnelly's names first appear in connection with the transaction.

71 Cross-examination by Mr. MARSTON:

Mr. Cady, what authority, if any, did you have to act for Mr. Ryan other than you have already stated?

Outside of such authority as I have stated, I don't apprehend that I had any.

Did you have any written authority?

No authority outside of the telegrams that were attached.

That is, the telegram to you that has already been put in evidence?

Yes, sir.

At the time this proposition was made to the Government what, in your opinion, was a fair value of the lands in question?

The price offered, $12,000.

And when did they commence to increase in value, and how much?

There began to be an appreciation in the value of property towards the first of February, 1887, but nothing marked occurred until in March. There was a very rapid rise in March.

What were the lands in question worth at that time?

There was a time that the lands would have brought a thousand dollars an acre.

That would be $80,000?

Yes, sir; or whatever the acreage was.

Are you familiar also with the old Government site?

Yes, sir.

What was the value of that, in your opinion, in September and December, 1886?

If you will allow me to consult a memorandum that I have made?

Yes, sir; if you have made a memorandum for the purpose of aiding you, refer to it.

72 The COURT: What has that to do with the case?

Mr. MARSTON: We can't tell what disposition will be made of it. It seems to me we have a right to show the value of the two. There is an equity there that this disposes of.

The COURT: Let it come in.

The WITNESS: At the scale of sales then it was worth about $350,000.

JOHN A. COLWELL sworn in behalf of the plaintiff.

Examined by Mr. GODWIN:

Where do you reside, and what is your occupation?

Sault Ste. Marie. I am an attorney.

Do you remember the transaction at the time the board was there and Mr. Ryan is said to have sold this piece of land to the Government?

Yes, sir.

Did you hold any office in the village of Sault Ste. Marie at the time?

I was one of the village council.

Had you something to do with the committee on streets then?

Yes, sir; one of them.

I wish you would state whether the members of the village council knew before that eighty feet was deeded to the city of this transaction with the Government.

Well, they knew that there was a transaction between the Government and Mr. Ryan. I don't know that they knew that the transfer had actually been made; they knew it was in operation; supposed it would be if it hadn't been.

The COURT: Did they know that he contemplated the transfer of this eighty acres?

73 Well, I can't very well say what the council knew.

Well, you were one of the council and on that committee of streets. Did you know what had been done?

I understood the transaction very well, I think.

Were you there at the board meeting?

Yes, sir; I attended the board meeting.

And observed what offers were made?

The offers were not made at the board meeting, but it was understood about town a few days afterwards that the sale was effected;

that Mr. Ryan made the sale. There was others at the time seeking to sell as well as Mr. Ryan, and it was understood that it was awarded to him.

Cross-examination by Mr. MARSTON:

Did you hear of a petition being presented to the council in the fall of 1886 requesting the opening of this Meridian street and the other between Chandler and this land?

Yes, sir.

What action did the council take in that matter?

We tried at that time to have the street opened. I think we went to Mr. Ryan.

Do you remember going to him?

Yes, sir; I think I did.

Do you remember what he said to you?

I could not say definitely, but my recollection is that Mr. Ryan said that the sale was under operation, and he didn't care to commit anything then.

And there was no other action taken by him, to your knowledge, until after the first day of April, 1887?

I don't remember the date; it was the spring after.

Were you a member of the city council?

74 Village at that time.

Were you afterwards of the city—on the city organization?

No, sir.

Do you know whether Meridian street was opened or anything done to it since then?

Meridian street was opened in the season of 1887, while it was a village, if I recollect right.

Do you remember when the work was done upon it?

Yes, sir.

When?

Why, I think it was in 1887, the last year that it was a village.

What work was done upon the street?

The street was opened and graded and several hundred dollars expended upon it.

Do you remember what time in 1887?

It would be the summer. I could not say when.

Do you remember the time that Ryan deeded that strip for the street?

I do, but I don't remember the date. I think it was early in the summer.

Do you remember whether the grading was subsequent to that period or not?

Oh, it was; I am quite sure.

How was it with the street between Chandler and the Ryan property?

I don't think it was open. I don't think it was worked upon.

You don't remember of any work being done upon the street in 1887?

No, sir.

Has there been since then?

I think not.

The work that was done then was confined, so far as you recollect, to Meridian street?

Yes, sir.

Redirect examination by Mr. GODWIN:

75 Was the grading done on this particular lot or some other part of Meridian street?

It was done on this particular lot; it was opened up and graded between the two forties in question.

Counsel for defendant offered in evidence a deed from Thomas Ryan and wife to James R. Ryan, dated June 6th, 1883, recorded June 7, 1883, in Liber 9 of Deeds, page 132, being the premises in dispute in this case, except that there are no reservations for streets.

Also deed from James R. Ryan and wife to Remedius Chartier, dated June 16, 1883, and recorded June 19, 1883, a copy of which is hereto annexed, marked Exhibit "F," and made part of this bill of exceptions.

Also a deed from Remedeus Chartier to James R. Ryan, dated November 26, 1886, and recorded in Liber 17 of Deeds November 29, 1886, page 252, a copy of which is hereto annexed, marked Exhibit "G," and made part of this bill of exceptions.

Also a deed from James R. Ryan and wife to Thomas Ryan, dated December 6, 1886, and recorded in Liber 18 of Deeds, page 456, December 13, 1886, being the same premises described in deed above referred to from Thomas Ryan and wife to James R. Ryan.

Also a resolution of the village council at a meeting held April 11, 1887, accepting the deed of Thomas Ryan and wife for Ryan avenue and Meridian street, a copy of which is hereto annexed, marked Exhibit "I," & made a part of this bill of exceptions.

76 THOMAS RYAN, sworn in his own behalf, testified as follows:

Examined by Mr. MARSTON:

You are the defendant in this case?

I am.

Do you remember the time that you received a telegram from Mr. Cady in Detroit in reference to this land?

I do.

State what interest you had in the land in question at that date.

I had no interest.

Did you have one or more interviews with Mr. Cady in reference to this matter after your return to the Sault?

Yes, sir.

At what time did you return?

I could not state the date. I returned on Saturday evening, about three or four days after I received the telegram.

Mr. Cady prepared the abstracts which were submitted to the district attorney at your request?

He did.

What, if anything, was said between Mr. Cady and yourself in reference to preparing one or more deeds?

For some time previous to the deeding of the property to my son, James R. Ryan, I had an understanding with my neighbor, Mr. Chandler, by which we were to devote to the village a certain number of feet for street purposes, each of us giving an equal share, and I thought that the same was necessary; that it was necessary for my own benefit or for the benefit of the village at large that this street should be opened, and it was on that ground that I suggested that I would like to have the reservation made of at least 33 feet from the east side of the southwest quarter of the southwest quarter of section six.

That would be 33 feet next the Chandler land?

Yes, sir.

77 What, if anything, was said between you upon the subject?

Myself and Mr. Cady then came to the conclusion that it would be well to prepare two deeds alike in every particular, except the reservation in the one and no reservation in the other, and to, if possible, induce the district attorney at Grand Rapids to accept the one making the reservation, but if he should not so decide, then let him take the other one.

Now, for what purpose did Mr. Cady say he wanted those deeds before the Government passed upon the question as to the sufficiency of the title and determined to take the land?

At the time that he brought the deeds to me and suggested the two deeds he brought them to me to have myself and my wife sign them, and I suggested to him that it was something unusual. I have prepared a great many deeds myself in my life, and I thought it was unusual to part with a deed without its equivalent in money or mortgage or something, and he said that it was simply for examination; that Mr. Godwin wished to examine the deed and see if it was correct in every particular; that it was simply for examination, and not to pass away from me without the money.

For what purpose did you execute and hand over these deeds to Mr. Cady?

Mr. GODWIN: That is objected to, and also this other that was not responsive. I move to strike out the latter part of his answer that was not responsive.

The COURT: You may prove what transpired between him and Mr. Cady, what was said and what was done; but we think

78 it would be going too far to permit you to prove his intentions. That question I could not permit.

What was said by Mr. Cady to you as to the signing and handing him those deeds, the object and purpose for which he desired it?

The COURT: What conversation took place between him and Mr. Cady and what was done?

Mr. Cady represented to me that it was necessary that the deed should be made out and presented for examination, and that the object was that the district attorney should see whether it was or was not perfect.

Now, what was said, if anything, between Cady and yourself differing from that in reference to the execution of the deeds and handing them to Cady?

As I said before, I suggested to Mr. Cady that it was unusual to hand over a deed without its equivalent, some consideration, and he told me that it was simply for examination. I kept the deed for several days and thought the matter over and then sent it to him to Detroit, when I became sure in my own mind that no advantage would be taken of it.

When did you next have a conversation with any officer of the Government in reference to these matters?

I had no conversation that I remember with any officer of the Government afterwards until the first of April, 1887.

With whom did you have the conversation then?

I went to see General Poe to know if there was anything done in the matter—if the Government had accepted my papers, and if they were ready to close the bargain with me. He said he had
79 sent the papers when they came from the district attorney at Grand Rapids to the Secretary of War, and he had a receipt for them, and the thing was entirely out of his hands?

What, if anything, was said or done by you with reference to the payment at that time?

A. Well, I went to the Detroit Savings Bank, where I expected that I might hear something every day, and I had heard nothing, so I took my attorney, Mr. Brennan, with me to General Poe, and we then told him that we would require the return of the papers.

What reason did you give General Poe, if any, for asking for a return of the papers?

Well, that I had heard nothing whatever from the Government, and that I didn't consider that they wanted the property.

What instruction, if any, did you give Brennan & Donnelly in reference to demanding a return of the deeds and papers?

I instructed Brennan & Donnelly to ask for a return of the papers and deeds.

Do you know whether their letter of April 1st was written under those instructions?

I believe it has been.

When was it that you were thus in Detroit and called on General Poe and instructed them?

It was the first day of April, 1877.

When did you first hear that the Government had taken any further action in regard to these lands?

I didn't hear anything further until—I think it was about the time that I heard the deed was recorded—about the 25th or 26th of May following, 1887.

Well, had you any notice or communication from the Gov-
80 ernment up to that time?

None whatever.

How did you first ascertain that the deed was recorded? Had you any notice from the Government that they had recorded it or were going to record it?

No notice whatever.

Well, how did you ascertain the fact?

The first that I heard of it was from my attorney, John C. Donnelly. He happened to be at Sault Ste. Marie and met the district attorney. The district attorney had come there to have the deed recorded. It was somewhere in the evening he told me, about sundown, and he was anxious about finding the register of deeds. He couldn't find him.

You ascertained the fact then, did you?

Yes, sir; that was the first.

What, then, if anything, did you do in reference to the matter?

I consulted with my attorneys, and employed Hon. Don M. Dickinson as assistant counsel, and a petition was prepared to the President of the United States asking for a return of the deed.

What was done with that petition, if you know? Who presented it, without giving any details?

It was presented by Mr. Brennan to the President, and I was present when he presented it.

Mr. MARSTON: Now, your honor, I have had serious doubts as to how far I would have a right to show what was said and done by the President of the United States in reference to this matter. The only ground that I can place it upon (and I wish to be entirely fair and frank with the court) is that anything said or any act done with reference to this matter by any officer of the Government,
81 and certainly by any one in that position, would be admissible as tending to show a non-acceptance of this deed of the property by the Government.

Mr. GODWIN: This act of Congress made it especially the duty of the Secretary of War to pass upon this matter.

The COURT: Judge Marston, the court are of the opinion that if we apply the rules of law we should have to stop you about where you are. We have been pretty liberal in allowing testimony to come in here, and some has gone in which we have great doubt about. We are inclined to the idea that what you propose would not be legally competent to effect anything; but if you press it we might permit you to go a little further upon the same theory that we have already allowed some other matters to come in.

Mr. MARSTON: I don't care to press it. I prefer not to, even though your honor would be inclined to admit it.

The defendant here rested his case.

Counsel for plaintiff read in evidence the following:

WAR DEPARTMENT,
WASHINGTON CITY, *February* 6, '88.

SIR: I have the honor to enclose the petition of Mr. Thomas Ryan, of the village of Sault Ste. Marie, Michigan, who prays for the can-

cellation of a deed executed by himself and wife December 18, 1886, granting to the United States certain land in that village previously selected as a new site for the post of Fort Brady, and holds in substance that prior to the acceptance of the deed it had been withdrawn by him, and that there was no valid delivery thereof,
82 without which it was not operative as a conveyance of the land described therein; also the notes of a hearing by the Secretary of War of the argument in the case by Mr. Michael Brennan, attorney for Mr. Ryan, and to request your opinion in regard to the petition of Mr. Ryan.

The act of Congress approved July 8, 1886, authorized the Secretary of War to sell the United States reservation at Fort Brady, Michigan, and to purchase a new site in or near the village of Sault Ste. Marie. August 12, 1886, a board of officers was appointed to select a new site. Proposals were invited, and the board recommended the purchase of 75 acres from Thomas Ryan for $12,000, his bid being the lowest and the site most favorable. The offer of Mr. Ryan is enclosed.

September 11, 1886, the Secretary of War telegraphed his approval of the proposed purchase, and Mr. Ryan was formally notified in writing of the acceptance of his offer.

November 29, 1886, the attorney for Ryan said the cause of delay in forwarding title papers arose from unexpected trouble in obtaining certain papers, which he expected to have by December 20, 1886.

The deed executed by Thomas Ryan and his wife December 18, 1886, was delivered and was recorded May 25, 1887. There is nothing in the record to show that this deed was presented for examination only, as now claimed by Ryan.

March 19, 1887, Lieutenant Colonel Poe transmitted the title papers to the site selected. He stated the delay had arisen from the desire to cure defects of title. The U. S. district attorney
83 tried to hasten the matter as much as possible.

March 28, 1887, the papers were sent to the Attorney General for his opinion as to the sufficiency of title.

May 18, 1887, the Attorney General returned the papers to the War Department, with opinion that the deed from Ryan and his wife is sufficient to pass title to the United States, providing nothing affecting the title has transpired since signing the deed. These deeds were placed in the hands of the Attorney General by the Secretary of War to be recorded.

July 9, 1887, the Department of Justice forwarded copy of a letter from the U. S. district attorney, stating that before the deed to the United States was recorded Ryan deeded a strip eighty feet wide through the center of the tract to the village of Sault Ste. Marie for a roadway.

The Lieutenant General recommended, June 24, that the ground be not purchased unless the roadway referred to be given up to the United States by the village authorities.

The papers were referred to Colonel Poe to ascertain if the village authorities would relinquish the roadway.

July 27, 1887, Colonel Poe reported that he had written to the president of the village of Sault Ste. Marie, and is informed that it is hopeless to expect favorable action by the present village council on the request for reconveyance of the strip of land mentioned. Mr. Ryan appeared before the council to oppose such reconveyance, and the village authorities appear to have been used by him to further his scheme to force the United States to select some other site
84 in order that he might take advantage of the rise in value of the property since its sale to the Government.

The Secretary of War and General Sheridan held a conference November 25, 1887, and decided to await further action of the village council of Sault Ste. Marie; that the rights of the United States should be maintained, and that payment must be withheld until the roadway is relinquished to the Government, thus making the title of the United States good to the whole tract conveyed by the deed of Thomas Ryan to the United States.

It is proper to add that it is the desire of this Department to secure the tract of land in accordance with the terms offered by Mr. Ryan September 8, 1886.

Very respectfully, your obedient servant,

WILLIAM C. ENDICOTT,
Secretary of War.

The honorable the Attorney General.

Counsel for defendant offered in evidence the rules adopted by the Department of Justice on the 27th of October, 1875, in regard to preparing title papers.

(See general order No. 47, *supra.*)

Mr. BRENNAN: You will concede that no consent was obtained from the Legislature of the State of Michigan ceding over the proposed site to the United States—no special legislation?

Mr. KINGSLEY: There was the general act in the compiled laws, but no special act.

Testimony closed.

85 The COURT: In the case of The United States against Ryan, the case on trial, the court are of opinion that there is no question of fact which is essential to the determination of the rights of these parties on which there appears to be any controversy, so that the case practically resolves itself into a question of law.

The act of Congress which provided for the selection and purchase of a site for Fort Brady confided to the Secretary of War the duty of making the selection of the site and of making the purchase therefor. The court is of opinion that that duty was confided to the Secretary of War as an official simply, and that it did not devolve any personal agency upon the incumbent of the office. Hence we are of opinion that whatever was done at the office of the Secretary of War by the official having by law authority to act in his place and stead would have the same legal consequence and effect as if it were performed by the Secretary himself, and hence that the action of the acting Secretary of War in the proceedings in this matter under

inquiry was of the same efficacy as if the action had been taken by the Secretary himself. It is well known that in the exercise of such duties the Secretary of War, like other heads of Departments located at the capital, must execute his functions through agencies and instrumentalities. It is impossible for the Secretary to be present and make personal examination in all parts of the country where the duties pertaining to his office might require such examination and inspection, and hence his work must be done through the
86 agencies and instrumentalities which are provided by law and usage for such purpose.

In pursuance of well-known usages a board was appointed for the purpose of making the examination and making a provisional selection of the site, receiving bids, and reporting to the Secretary of War for the proposed site. This board having been regularly convened (as we must assume), a proposition was laid before it in behalf of Mr. Ryan by a gentleman who had been acting for him as his attorney in his absence, Mr. Cady. Some communications had been had between Mr. Cady and his principal, Mr. Ryan, in reference to the proposition to be laid before the board, by way of telegrams, and those telegrams were submitted, with the proposition which Mr. Cady made on behalf of Mr. Ryan, to the board.

I do not think it necessary to determine whether the telegrams—the one from Mr. Cady to Mr. Ryan and from Ryan back to Cady, with reference to the proposition to be made to the board—constitute a sufficient authorization, under the statute of frauds, to Cady to make the offer, because we think that what followed was a sufficient ratification of the action of Mr. Cady by Mr. Ryan, if preliminary authority was not constituted and established by these telegrams.

This offer was laid before the board, and the board, having considered it, determined upon the selection of that site and to recommend its adoption, and with the price that was named in the offer laid before the board. This acceptance of the offer was, in general terms, reported to the Secretary of War. The precise de-
87 scription of the property does not appear to have been contained in the report, but a general description of it was; and it appears from that report, taken in connection with the description of the property, that the board must have understood (having regard to the number of acres which the plat shows and the amount which would be taken off by the reservation of Easterday avenue) that the seventy-five acres would be the amount of land which would be left after Easterday avenue were taken off; so that if it were necessary to go into that matter for the purpose of determining the meaning of this report it would appear with sufficient certainty that the land which the board recommended for the proposed site would be these two forty-acre pieces (so called), with Easterday avenue reserved; but upon this general report made by the board to the Secretary of War an order was passed at headquarters by the acting Secretary (who, as has been stated, we think, possessed the authority of the Secretary of War) adopting this report, both as to the selection of the site and the price which was to be paid therefor, and direction

was sent to the proper officers here, the agents of the War Department for this purpose, to notify Mr. Ryan of the approval of the selection and the acceptance of his offer; and it appears to the court that the minds of the parties met upon the proposition which had been laid by Mr. Ryan before the board by this notification to Mr. Ryan in an official way of the acceptance of his offer, and that that constituted a contract. This seems to us to be the turning point in the case, and if the contract was thus closed what followed was merely in the execution of that contract. The delivery of the deeds to the
88 district attorney for the purpose of having them transmitted in the orderly course to the Attorney General for his examination and approval was in the course of the execution of the contract, and we are inclined to think that after the deeds had thus been delivered by the defendant to the proper officials in the course of the execution of that contract and upon a contract which we hold was closed that it was too late for him to withdraw the proposition and too late to recall the deeds, provided his delivery of the deeds, which must be regarded as a continuous delivery, was finally consummated by an acceptance by the Secretary of War. Some little delay, but it would seem to us not an unreasonable one, occurred before the final acceptance of the deed was made, which we think must be regarded as having taken place when the Secretary of War was notified that the deed had been recorded, and he forebore to make any objections to the act of the district attorney in causing the deed to be recorded.

It has been alleged that there was an unreasonable delay in the tender of the payment of the price. It may be that after the recording of this deed and the Secretary of War (on being notified that the deed had been recorded) failed to make any repudiation of the acts of the district attorney that the claim of the defendant for the purchase price became absolute, and that he was entitled to it and could have recovered it; but the delay of the payment of the purchase-money was caused, it seems, by the act of the defendant
89 himself in making a conveyance or dedication of a part of this land for a street through the center of it—a proceeding which, in view of the purpose which the Government was known to have had in making this purchase, would seem to have been adequate in its nature at least, whether in purpose or not, to obstruct the completion of the purchase, and it would hardly seem that the defendant ought to be allowed to object to the delay which took place in the payment of the purchase price if he by an act of his own caused the delay in clearing up the title. Still we do not think that this part of the case as to the delay in the payment of the consideration really touches the substantial question here, which is whether the title passed.

Now, of course, it is well understood that the same officer who acts in the examination and approval of the title and the papers designed to convey title to the Government is not the same one who pays the money. The course of routine of the business involves the agency of different departments, and it is quite likely that the payment of the money was not necessary to the vesting of the title.

Another branch of the subject remains growing out of a conveyance which was made by one of the Ryans to a priest named Chartier. It seems that before the defendant made this proposition to the Government to sell these lands that they had been conveyed to a priest in trust for a certain purpose described in the deed of trust, and it appears also in the case that Mr. Ryan, for the purpose of having that title transferred to the Government in pursuance of his offer, obtained a deed from this priest back to himself.

90 It is claimed by counsel for the defendant that this deed from the priest was void, and that, therefore, no title was revested in the defendant, Mr. Ryan, and that he therefore could convey no title, and that the United States got none through this deed. The deed is a warranty deed, and is an absolute assertion on his part, as a matter of law, that he has the title, and that it is free from incumbrances, and that he has seizin and a right to the possession, and without determining what the effect of that warranty deed would be in this action of ejectment as estopping the defendant from denying that the plaintiff obtained title through that warranty deed we are of opinion that the effect of the deed from Chartier to Ryan is not that which is claimed for it. It is true the statute declares that a conveyance by a trustee under such or similar circumstances is void, but we take it that that simply means that it shall be voidable at the election of the party who is in a position to complain of it. The term "void" is often used in statutory provisions with that signification—that is to say, the signification of voidable—and I mean only that the conveyance is void as to parties who are in a position to complain of it. The legal title was in Chartier. Wherever the equitable interest may have been, we think it was competent for him to convey the legal title. It may be charged with equities. The determination of that point is not essential now. It was competent to convey the legal title to another, and perhaps, as I have just said, the effect would be to leave that grantee charged with the same trust. We say nothing about that, but for the purpose

91 of this action of ejectment we think that the deed conveyed the legal title to the defendant, and that there is no reason on account of the devolution of the title to this ten acres to create an exception.

The consequence of these views must be that the court should direct the jury to find a verdict for the plaintiff.

The court thereupon instructed the jury that they should render a verdict for the plaintiff; whereupon counsel for the defendant then and there took exception as follows:

1. To the charge of the court in directing the jury to render a verdict for the plaintiff.

2. To the refusal of the court to charge the jury to render a verdict for the defendant.

3. To the refusal of the court to submit the case to the jury.

The counsel for the defendant then asked for sixty days in which to settle a bill of exceptions, and that in the meantime all proceedings be stayed, except taxation for costs, which request was granted by the court.

92 And because the foregoing testimony, requests, and refusals and exceptions to the charge of the court and the charge of said court do not appear of record in said cause, at the request of the defendant I have caused the foregoing bill of exceptions to be settled the 27th day of September, 1889.

Said bill of exceptions contains a substantial statement of all the testimony introduced in said cause.

Witness my hand and seal this 27th day of September, A. D. 1889.

H. F. SEVERENS, [SEAL.]
District Judge.

93 EXHIBIT "F."

James R. Ryan & wife to Remegius Chartier, S. J.; Geo. W. Brown.

This indenture, made this sixteenth day of June, in the year of our Lord one thousand eight hundred and eighty-three, between James R. Ryan and Elizabeth A. Ryan, his wife, of the village of Sault Ste. Marie, Chippewa county, and State of Michigan, of the first part, and Remegius Chartier, S. J., of the village, county, and State aforesaid, of the second part, witnesseth:

That the said parties of the first part, for and in consideration of the sum of one dollar and other considerations to them in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, do by these presents grant, bargain, sell, remise, release, and forever quitclaim unto the said party of the second part and to his successors and assigns forever the following parcel of land, situate in the township of Sault Ste. Marie, Chippewa county, and State of Michigan, and being part of the S. E. ¼ of the S. E. ¼ of section one, in town. 47 north, of range one (1) west, and more particularly described as follows, viz:

Commencing in the south line of South street, at its intersection of the meridian line, and running thence southerly on said meridian line forty (40) rods; thence westerly parallel with South street forty rods; thence northerly parallel with said meridian line to South street forty rods; thence easterly in the south line of South street forty rods to the said meridian line, the place of beginning, being a square parcel of land, containing ten (10) acres.

94 The said above-described parcel of land to be forever the property of the Fathers of the Society of Jesus for the purposes of education and other works in accordance with their constitution, with power to sell and dispose of the same to accomplish the same ends in case circumstances should require it.

Together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining; to have and to hold the said parcel of land hereinbefore described to the said party of the second part and to his successors, heirs, and assigns, to the sole and only proper use, benefit, and behoof of the said party of the second part, successors, heirs, and assigns forever.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

JAMES R. RYAN. [L. S.]
ELIZABETH A. RYAN. [L. S.]

Signed, sealed, and delivered in presence of—

E. S. B. SUTTON.
L. E. O. MAEA.

STATE OF MICHIGAN, }
County of Chippewa, } *ss:*

On this sixteenth day of June, one thousand eight hundred and eighty-three, before me, E. S. B. Sutton, a notary public in and for said county, personally came the above-named James R. Ryan and Elizabeth A. Ryan, his wife, known to me to be the persons who executed the foregoing instrument, and acknowledged the same to be *each* free act and deed.

E. S. B. SUTTON,
Notary Public.

95 EXHIBIT "G."

This indenture, made the twenty-sixth day of November, in the year of our Lord one thousand eight hundred and eighty-six, between Remegius Chartier, S. J., of the village of Sault Ste. Marie, of the first part, and James R. Ryan, of the same place, of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of one dollar to him in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, doth by these presents grant, bargain, sell, remise, release, and forever quitclaim unto the said party of the second part and to his heirs and assigns forever the following-described parcel of land:

Part of the southeast quarter (¼) of the southeast quarter (¼) of section one (1), in town. forty-seven (47) north, of range one west, and more particularly described as follows, viz: Commencing in the south line of South street, at its intersection of the meridian line, and running thence southerly on said meridian line forty (40) rods; thence westerly parallel with South street forty (40) rods; thence northerly parallel with said meridian line to South street forty rods; thence easterly in the south line of South street forty rods to the said meridian line, the place of beginning, being a square parcel of land, containing ten acres (10), in the State of Michigan, county of Chippewa—

Together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining; to have and to hold the said premises to the said party of the second part and to his heirs and assigns, to the sole and only proper use,
96 benefit, and behoof of the said party of the second part, heirs and assigns forever.

In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

REMEGIUS CHARTIER, *S. J.* [L. S.]

Signed, sealed, and delivered in presence of—

W. B. CADY.
THOMAS RYAN.

STATE OF MICHIGAN, *County of Chippewa,* } *ss:*

On this twenty-six day of November, in the year one thousand eight hundred and eighty-six, before me, W. B. Cady, a notary public in and for said county, personally came the above-named Remegius Chartier, known to me to be the person who executed the foregoing instrument, and acknowledged the same to be his free act and deed.

W. B. CADY,
Notary Public.

97 EXHIBIT "I."

At a session of the village council, held in the court-room, at the court-house, in the village of Sault Ste. Marie, April 11th, A. D. 1887, at 7.30 p. m.

Present: The president, Trustees Colwell, Ennis, Gardner, Goff, Haller, and Loughin.

The deed of Thomas Ryan and wife for land for Ryan Ave. and Meridian street was submitted and read, and, on motion of Trustee Goff,

Resolved, That the same be received, and that the clerk be instructed to have the said deed recorded.

Carried.

Ayes—Trustees Colwell, Ennis, Gardner, Goff, Haller, Loughin, the president.

Nays—None.

I, Ed. J. Penny, recorder of the city of Sault Ste. Marie, Michigan, do hereby certify that the above-named and foregoing is a true and exact copy of the records of proceedings of the village council of the village of Sault Ste. Marie, Michigan, at a meeting held April 11th, 1887, and that the above resolution is all of the record of a deed of land for street purposes from Thomas Ryan and wife at said meeting.

ED. J. PENNY,
City Recorder.

97½ [Endorsed:] O K. Kingsly.

98 *Writ of Error. Filed Aug. 26th, 1889. F. M. Moore, Dep. Clerk.*

Michael Brennan, att'y for pl'ff in error; John C. Donnelly, of counsel.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judge of the circuit court of the United States for the western district of Michigan, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you or some of you, between The United States of America, plaintiff, and Thomas Ryan, defendant, a manifest error hath happened, to the great damage of the said Thomas Ryan, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further
99 to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 29th day of July, in the year of our Lord one thousand eight hundred and eighty-nine.

CHARLES L. FITCH,
[COURT SEAL.] *Clerk of the Circuit Court of the United States for the Western Dist. of Michigan.*

Allowed by—
HENRY F. SEVERENS,
Dist. Judge.

100 *Citation on Appeal. Filed Aug. 26th, 1889. F. M. Moore, Deputy Clerk.*

THE UNITED STATES OF AMERICA.

To the United States of America, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the western district of Michigan, wherein Thomas Ryan

is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Henry F. Severens, district judge, presiding in the said circuit court of the United States, this 29th day of July, in the year of our Lord one thousand eight hundred and eighty-nine.

HENRY F. SEVERENS,
Dist. Judge.

101 STATE OF MICHIGAN, } ss:
Eastern District of Michigan, County of Wayne, }

Michael Brennan, being duly sworn, deposes and says that he served upon G. Chase Godwin, Esquire, attorney for the United States of America in the suit of The United States of America *vs.* Thomas Ryan, in the circuit court of the United States for the northern division of the western district of Michigan, a true copy of the within citation by depositing in the post office in the city of Detroit, on the 21st day of August, A. D. 1889, a true copy of the within citation enclosed in an envelope addressed as follows, "G. Chase Godwin, Esq., U. S. district attorney, Grand Rapids, Mich," postage fully prepaid; and further says not.

MICHAEL BRANNAN.

Subscribed and sworn to before me this 24th day of August, A. D. 1889.

ADAM E. BLOOM,
Notary Public, Wayne County, Mich.

102 *Bond on Writ of Error. Filed Aug. 26th*, 1889. *F. M. Moore, Dep. Clerk.*

Know all men by these presents that we, Thomas Ryan, principal, of Sault Ste. Marie, and Lorenzo J. Cody and Bartholomew McEvoy, of same place, sureties, are held and firmly bound unto the United States of America in the full and just sum of five hundred dollars, to be paid to the said The United States of America, its certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this twenty-seventh day of July, in the year of our Lord one thousand eight hundred and eighty-nine.

Whereas lately, at a session of the circuit court of the United States for the western district of Michigan, in the northern division thereof, in a suit depending in said court between The United States of America, plaintiff, and Thomas Ryan, defendant, a judgment was rendered against the said Thomas Ryan, and the said Thomas Ryan

having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said The United States of America, citing and admonishing it to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next:

Now, the condition of the above obligation is such that if the said Thomas Ryan shall prosecute his writ to effect and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

103 THOMAS RYAN. [SEAL.]
LORENZO J. CODY. [SEAL.]
BARTHOLOMEW McEVOY. [SEAL.]

Sealed and delivered in presence of—
JAMES R. RYAN.
JAMES L. TURNER.

Approved by—
JNO. A. COLWELL,
U. S. Circuit Court Com., Western District of Mich., Northern Division.

Approved in form and substance July 29th, 1889.
H. F. SEVERENS,
Dist. Judge.

STATE OF MICHIGAN, } *ss:*
County of Chippewa, }

Lorenzo J. Cody and Bartholomew McEvoy, the sureties named in the foregoing obligation, being duly sworn each severally deposes and says that he is a resident of the city of Sault Ste. Marie and the State of Michigan and is worth the sum of one thousand dollars over all just debts and liabilities in real estate subject to execution in said county of Chippewa.

LORENZO J. CODY.
BARTHALOMEU McEVOY.

Subscribed and sworn to before me this 29th day of July, A. D. 1889.

JNO. A. COLWELL,
[COM'R'S SEAL.] *U. S. Circuit Court Commissioner.*

104 UNITED STATES OF AMERICA, } *ss:*
Western District of Michigan, Northern Division, }

I, Francis M. Moore, deputy clerk of the circuit court of the United States for the sixth circuit and western district of Michigan, northern division, do hereby certify the annexed and foregoing to be true and correct copies of the declaration, rule to plead, trial and judgment, bill of exceptions, writ of error, bond on writ of error, and citation on appeal in the cause therein entitled, now of record and on

file in said cause in said court; that I have compared the same with the original records and files now remaining of record and on file in said court; that they are true and correct copies thereof and of the whole of said original records and files.

Seal of the U. S. Circuit Court, Western District of Mich., Northern Division.

In testimony whereof I have hereunto set my hand and affixed the seal of said circuit court, at the city of Marquette, in said district and division, the first day of October, one thousand eight hundred and eighty-nine.

FRANCIS M. MOORE,
Deputy Clerk.

Endorsed on cover: W. Michigan C. C. U. S. No. 1307. Thomas Ryan, plaintiff in error, *vs.* The United States. Filed October 9, 1889.

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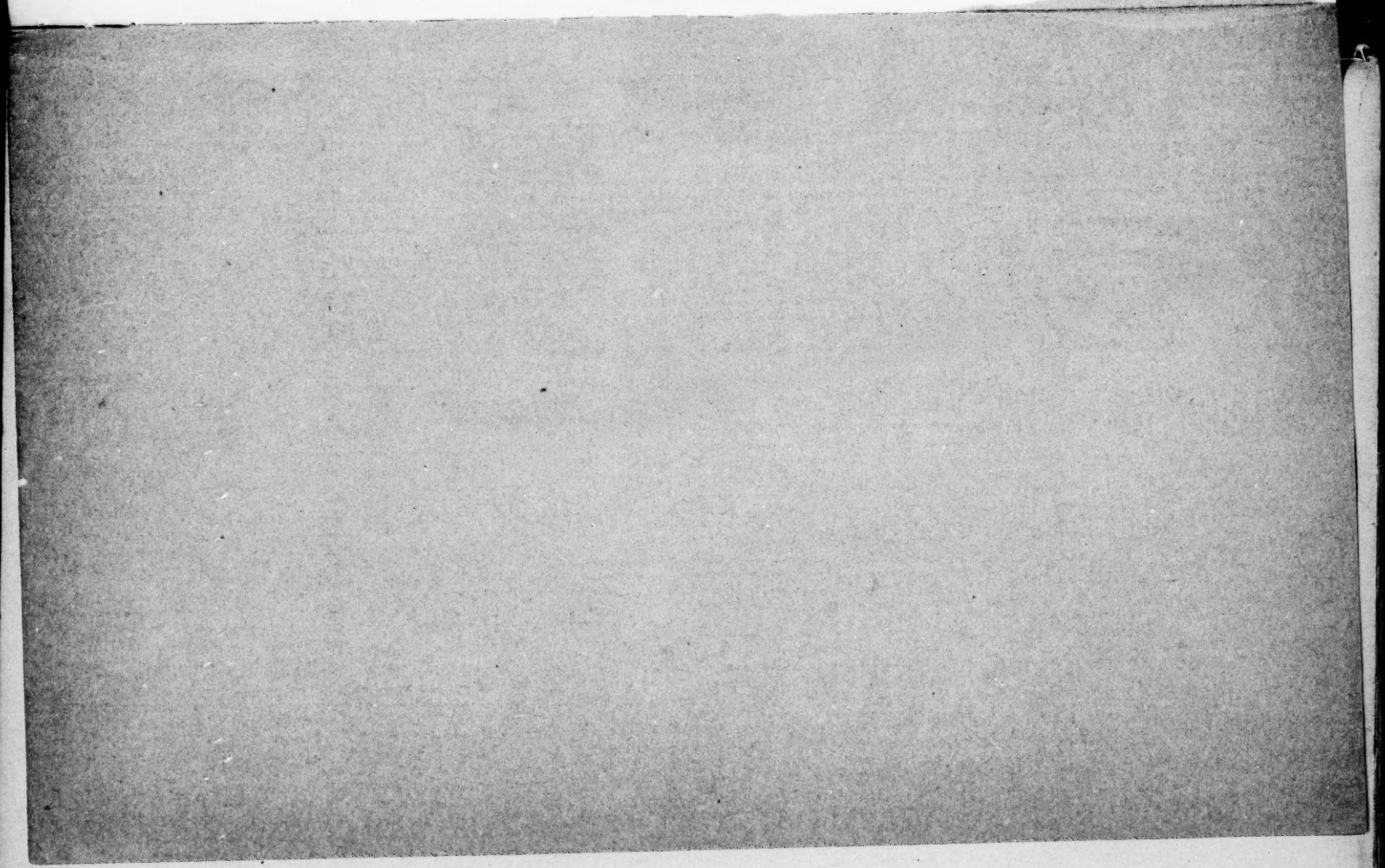
In the Supreme Court of the United States.

OCTOBER TERM, 1889.

THOMAS RYAN, PLAINTIFF IN ERROR,
vs.
THE UNITED STATES.
} No. 1307.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MICHIGAN.



In the Supreme Court of the United States

OCTOBER TERM, 1889.

THOMAS RYAN, PLAINTIFF IN ERROR,
vs.
THE UNITED STATES.
No. 1307.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MICHIGAN.

MOTION TO ADVANCE.

And now, March 24, 1890, comes the Solicitor-General, for the defendant in error, and respectfully moves the court to advance the above-entitled case upon the docket, and to hear the same orally during the current term, for the reason that the interest of the United States in a speedy hearing and determination of the case is pressing. In support of this, the following facts are presented:

Congress, by an act of July 8, 1886 (24 Stat. L., 128), authorized the Secretary of War to sell the Fort Brady reservation, then and now occupied by the Government as a military fort at Sault Ste. Marie, Mich. The Secretary was also authorized by said act to purchase a new site in or near the same village, and to construct buildings thereon for a four-company post, and $120,000 was appropriated by said act for such purpose. Upon August

12, 1886, a board of officers was duly appointed under said act to select a site for the new fort, and on the 11th day of September following the board reported in favor of accepting an offer from Thomas Ryan, now plaintiff in error, to sell to the United States the lands in dispute in this case, containing 80 acres, more or less, for the sum of $12,000. The report was approved and the offer was accepted on condition that the title should be found free from defect in an examination by the United States attorney for the western district of Michigan and the Attorney-General of the United States.

On December 1, 1886, abstracts of title to said land, and two deeds for the same to the United States from Ryan, one containing certain reservations, were by said Ryan forwarded to the proper officers of the Government for examination and acceptance. Before the title was finally approved by the Attorney-General, Ryan, on April 1, 1887, through his attorneys, wrote to the War Department that a different disposition had been made of the property, and requested that the abstracts and deeds be returned. May 19, 1887, the Attorney-General transmitted one of the deeds to the United States attorney at Grand Rapids, Mich., with instructions to continue the search for liens, encumbrances, etc., and if the title was unaffected, to record the deed. On May 25, 1887, the deed was recorded.

September 20, 1887, the above and other facts were presented by said Ryan to President Cleveland, and relief asked for. The President, upon due consideration, directed that the Government commence an action of ejectment for the purpose of having the questions in dispute settled by

the courts. In pursuance of such instructions, an action of ejectment was begun June 8, 1888; was tried in said circuit court on the 17th day of July, 1889, and, under the direction of said court, a verdict was by the jury rendered in favor of the Government. A judgment was rendered upon said verdict, and all further proceedings thereon stayed until the cause could be heard in this court. A bill of exceptions has been duly settled and signed, and is now on file in this court as a part of the record in the case. The transcript of record has been printed.

It will be observed by an examination of the act authorizing the purchase of the premises in dispute, that there is a further provision therein authorizing the Secretary of War to sell the military reservation known as Fort Brady, and now occupied as such, lying in the central portion of Sault Ste. Marie. The citizens of that village—now grown into a city—are exceedingly anxious that the sale of these lots, and the improvement of their city by the construction of streets through the reservation, shall not be delayed. The resolutions of the common council and of the chamber of commerce are appended to this motion. The land of the reservation is especially valuable as business property, because of the wharf and canal privileges which may be availed of when the land has been vacated by the Government.

While the public interest in the use of the old Fort Brady reservation for business and street purposes might not alone warrant us in asking this court to burden itself with the hearing and decision of the case at the present term, there is a stronger ground for the motion in the fact

that a delay beyond the present term in the decision of the matter will seriously interfere with the interests of the Government. At Fort Brady, by reason of its position on the border, there must be stationed not less than two companies of troops. The buildings now occupied in the old fort are wooden and poorly adapted in their present condition to shelter the troops from the inclemency of a northern winter.

In the expectation that the controversy would be quickly decided, no repairs have been put upon these buildings for the two or three years last past. Such is the condition of the buildings, that any repairs to be effective must be in their nature permanent and expensive. If the case is decided at this term in favor of the Government, it will be possible to use the appropriation for the improvement of the new site before the next winter in the erection of new buildings, so that they may be occupied by the troops before the cold weather sets in.

The delay in making application for the advancement of this case was occasioned by the illness and death of the late Solicitor-General and the illness of Mr. Assistant Attorney-General Maury. It is hoped that in view of all the circumstances the court may be pleased to grant the foregoing motion to advance the cause and set it down for hearing at the present term.

The correspondence between this Department and the War Department, from which most of the facts stated herein with reference to the necessity for a speedy hearing of the cause have been derived, is appended.

Respectfully submitted.

WM. H. TAFT,
Solicitor-General.

APPENDIX.

WAR DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, September 7, 1889.

MY DEAR SIR: In transmitting the accompanying letter, I beg to invite attention to papers on the same subject already in your office. This is an important matter to the Government and people, and if it can properly be expedited it is desirable that it should be.

Very truly, yours,

REDFIELD PROCTOR,
Secretary of War.

The ATTORNEY-GENERAL.

SAULT STE. MARIE, MICH.,
September 2d, 1889.

DEAR SIR: In the suit of ejectment of the United States against Thomas Ryan, decided in favor of the United States at the last term of the United States district court, I am informed that an appeal has been taken. Our people are anxious to have the matter reached as soon as possible, as streets are necessary through the present fort grounds. Could you not ask to have the suit put forward, that a decision may be reached in the October term of the Supreme Court? The present fort buildings are more or less needing repairs, and if an early decision could be had, it would seem it would be for the interest of all parties.

Very truly, yours,

HENRY W. SEYMOUR,
Late Member of Congress from Michigan.

Hon. REDFIELD PROCTOR,
Secretary of War.

WAR DEPARTMENT,
Washington City, October 15, 1889.

SIR: I have the honor to transmit herewith a letter of the 1st instant from United States District Attorney G. Chase Godwin, relative to the case of Thomas Ryan, appellant, in the matter of land for the site of Fort Brady, and to state that after a conference with Solicitor-General Chapman on this subject, it seems to be important to the interests of the Government that the case should be decided as quickly as possible.

Very respectfully,

REDFIELD PROCTOR,
Secretary of War.

The ATTORNEY-GENERAL.

WAR DEPARTMENT,
Washington City, October 30, 1889.

SIR: In connection with previous correspondence on this subject I have the honor to transmit herewith a resolution adopted by the chamber of commerce of Sault Ste. Marie, Mich., requesting a speedy hearing and decision of the case of the United States against Thomas Ryan regarding title to Fort Brady, Mich.

Very respectfully,

REDFIELD PROCTOR,
Secretary of War.

The ATTORNEY-GENERAL.

Whereas, the extension of Water street through Fort Brady, in the city of Sault Ste. Marie, is greatly needed for the convenience of business and the necessity of the city for additional drainge, and

Whereas, an ejectment suit on appeal for the new fort grounds is now pending in the Supreme Court of the United States, which may not be reached for years, unless advanced on the calendar at the request of the Secretary of War, and which action is desired by the appellant, and

Whereas, the present fort buildings should be extensively repaired if much longer occupied by the United States troops, or new quarters constructed; therefore, be it

Resolved by the Chamber of Commerce of the City of Sault Ste. Marie, that we hereby respectfully request the Honorable Secretary of War to take such action, within his legitimate authority, as will bring to as speedy a hearing and decision as possible the case of the United States against Thomas Ryan; and that a copy of this preamble and resolution be forwarded to him.

I hereby certify that the above is a true copy of the resolution adopted by the Chamber of Commerce of the city of Sault Ste. Marie, at a meeting held October 22, 1889.

[SEAL.] C. D. DOWLING, *Secretary.*

Whereas it is advisable for the interests of the city of Sault Ste. Marie, that the litigation between the United States and Thomas Ryan should be brought to as speedy a termination as the interests of justice will permit: Therefore

Resolved by the council of the city of Sault Ste. Marie, That the Secretary of War be respectfully requested to ask the advancement of the cause on the calendar wherein the United States is plaintiff and Thomas Ryan is defendant.

I do hereby certify that the above and foregoing is a true and compared copy of a resolution adopted by the common council of the city of Sault Ste. Marie, Mich., October 24, A. D. 1889.

[SEAL.] ED. J. PENNY,
Recorder.

[Indorsement.]

WAR DEPARTMENT,
November 2, 1889.

Respectfully referred to the Attorney-General in connection with previous papers on the subject now before his Department.

REDFIELD PROCTOR,
Secretary of War.

WAR DEPARTMENT, *March* 20, 1890.

SIR: Referring to correspondence in regard to the suit of The United States *vs.* Thomas Ryan, involving the site of the post of New Fort Brady at Sault Ste. Marie, I have the honor to inclose herewith a letter from the Quartermaster-General, of the 20th instant, showing the imperative necessity for an early decision of the case. There are also other reasons, to which I have heretofore referred.

Very respectfully,

REDFIELD PROCTOR,
Secretary of War.

The ATTORNEY-GENERAL.

WAR DEPARTMENT,
Washington, D. C., March 20, 1890.

SIR: Expecting continually that the legal questions involving a new site for a post at the Sault Ste. Marie would be adjusted, the old post of Fort Brady has been denied for three years its proportion of the barracks and quarters appropriation for repairs.

It is observed that the troops are to be kept there another winter in these old structures unless a decision can be reached before the building season is passed.

It is of the utmost importance to the troops of this garrison that a speedy conclusion be reached, and the appropriation for the new post at that place made available before cold weather.

I have the honor to be, very respectfully,

S. B. HOLABIRD,
Quartermaster-General, U. S. Army.

The SECRETARY OF WAR.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1869.

No. 1307.

THOMAS RYAN, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

BRIEF OF

MICHAEL BRENNAN,
JOHN C. DONNELLY AND
ISAAC MARSTON,
Counsel for Plaintiff in Error.

Supreme Court of the United States.

OCTOBER TERM, 1889.

THOMAS RYAN, *Plaintiff in Error,* vs. THE UNITED STATES.	*In Error to the Circuit Court of the United States for the Western District of Michigan. No. 1307.*

BRIEF FOR PLAINTIFF IN ERROR.

This is is an action of ejectment brought by the United States against Thomas Ryan for the possession of about seventy-five acres of land in the city of Sault Ste. Marie, Michigan.

On July 8, 1886, an act of Congress was approved, which provided for the vacation and sale of the present government reservation at Sault Ste. Marie, occupied as a site for the existing Fort Brady at that point, and for the purchase of a new site for a Military Post.

See Statutes L., 1886, p. 128.

On August 12, 1886, by direction of the Secretary of War a Board of Officers was appointed to select suitable grounds for such Military Post.

See Record, p. 6.

While the board was sitting at Sault Ste. Marie, and about September 7, 1886, the following telegram was received by the plaintiff in error from W. B. Cady, an attorney.

"*To Thomas Ryan, Michigan Exchange Hotel, Detroit, Michigan:*

Telegraph price to me of the southwest quarter of southwest quarter of section six, and southeast quarter of southeast quarter of section 1, for Fort Brady. Answer immediately. W. B. CADY."

To which plaintiff in error sent the following reply:

"Twelve thousand dollars."

Rec., p. 8.

Mr. Cady thereupon submitted to the board the following:

"SIRS: I am instructed by Mr. Ryan to offer the S. W. $\frac{1}{4}$ of the S. W. $\frac{1}{4}$ of Sec. 6, and the S. E. $\frac{1}{4}$ of the S. E. $\frac{1}{4}$ of Sec. 1 (both in town 47 N. of R. 1, E. and W.), containing eighty (80) acres more or less, if sold together, for the sum of twelve thousand dollars. Although not authorized, yet I assume that Mr. Ryan would sell any other portion of said lands at a price in ratio to the above (*i. e.* $150 per acre). P. S. The above offer is subject to the opening of Easterday avenue along the south line."

Rec., p. 8.

On September 9, 1886, the board sent the following communication:

FORT BRADY, MICH., September 9, 1886.

Adjutant General U. S. Army:

SIR: I have the honor to forward a copy of telegram sent this day as follows:

FORT BRADY, MICH., September 9, 1886.

Adjutant-General of the Army, Washington, D. C.:

The board recommends for purchase the two adjoining forty-acre tracts on the hill, half mile due south of west end

of canal, divided through the center of length by meridian of Sault Ste. Marie, aggregating about seventy-five acres; price, twelve thousand dollars.

Very respectfully,

Your obedient servant,

HENRY L. ABBOT,

Lt.-Col. Corps of Engineers, President of Board of Officers.

On which appears the following indorsement:

WAR DEPARTMENT, September 11, 1886.

"Under ordinary circumstances in this case would have been deferred until the return of the Secretary of War or the Lieutenant-General.

In view, however, of the importance of the selection of this site, and of the fact that inaction here would delay further action by the board, which is now in Michigan awaiting reply, the recommendation of the board, as contained in the within telegram, is approved.

The board will be advised by telegraph of such approval.

R. C. DRUM,

Act'g Sec'y War."

See Rec., p. 9.

And on the same day the president of the board notified Mr. Cady of such recommendation, and the latter read or gave the letter to Mr. Ryan on his return from Detroit.

See Rec., pp. 9 and 10.

Sept. 30, the Acting Secretary of War wrote Col. Poe at Detroit to collect and forward to the War Department the necessary deeds and title *papers for examination as required by law.*

Rec., p 11.

A copy of the foregoing letter was mailed Oct. — by Col. Poe to Mr. Ryan, together with a copy of General Order No. 47, of which paragraph 20 is as follows:

"XX. Before sending the papers to this office for examination they should be submitted to the attorney of the United States for the district in which the land lies. It will be his duty to certify an opinion on the whole title and to state particularly whether the local laws are correctly given, the papers properly authenticated, and the facts established by satisfactory proof."

Dec. 22, 1886, Col. Poe wrote the U. S. District Attorney as follows:

"U. S. ENGINEER'S OFFICE, 34 West Congress Street,
DETROIT, MICH., Dec. 22, 1886.

G. Chase Godwin, Esq., U. S. Dist. Att'y, Grand Rapids, Mich:

SIR—In accordance with paragraph XX of the circular of the Attorney General of the United States, dated October 27th, 1875, W. B. Cady, Esq., attorney for Mr. Thomas Ryan of Sault Ste. Marie, Mich., visits you for the purpose of submitting the title papers to a tract of land which the Government desires to purchase for a new site for Fort Brady. The War Department is anxious to complete the transaction as soon as possible, and your early action would greatly facilitate matters.

Very respectfully your obedient servant,

O. M. POE,
Lt. Col. of Eng'rs, B'v't. Brig. Gen. U. S. A.

Jan. 3, 1887, Mr. Cady wrote to the U. S. Dist. Attorney as follows:

"*G. Chase Godwin, Esq., U. S. Dist. Att'y, Grand Rapids.*

SIR—I inclose deed, etc., in the Ryan sale. This makes papers complete. I would respectfully call your attention to the following:

1st. *I inclose two deeds of lands in question*, one in exact conformity to Mr. Ryan's bid, the other reserving a strip of land 33 feet wide off east side for street purposes.

2d. That the dower right, if any, of Mrs. Warner, is cut off by the State tax deeds held by Mr. Ryan.

Most respectfully asking you to consider the papers at as early a date as possible, and to communicate to me the results, I submit the papers to your inspection.

In conversation with Gen. Poe to-day, he seemed quite certain that the papers would be sent to him after your examination of them, and that he should send them to the War Department, you sending your report to the Attorney General.

Would you kindly inform me what course you have decided to follow in the matter?

I remain your obedient servant,

W. B. CADY."

On the 19th of March, 1887, Col. Poe transmitted the deeds and title papers to the War Department, and on the 28th of the same month the Secretary of War submitted the abstracts of title maps, and deeds of conveyance to the Attorney General for his opinion thereon.

See Rec. p., 22.

On the first of April, 1887, Mr. Ryan instructed his attorneys at Detroit, to demand from the War Department a return of his papers; in pursuance of such instructions Brennan & Donnelly wrote the following letter to the Secretary of War.

DETROIT, April 1, 1887.

"*Hon. William C. Endicott, Secretary of War, Washington, D. C.*

SIR—Mr. Thomas Ryan of Sault Ste. Marie, in this State with whom your department had some negotiations some

months ago for the purchase of the S. W. $\frac{1}{4}$ of the S. W. $\frac{1}{4}$ of section 6, the S. E. $\frac{1}{4}$ of the S. E. $\frac{1}{4}$ of section 1, in said town as a site for Fort Brady, has instructed us to say that he has arranged for a different disposition of the property, and further negotiations are unnecessary. Will you please return to him all papers submitted to the Government concerning said property?

Very truly yours,

BRENNAN & DONNELLY."

On the last mentioned letter appears the following indorsement.

"Respectfully submitted to the Lieutenant General for remarks.

The title papers to the property at Sault Ste. Marie, proposed to be purchased by the Goverment from Thomas Ryan and wife were sent to the Attorney General on the 28th ultimo. A copy of this letter has this day been sent to the Attorney General in connection with the title papers above mentioned.

WM. C. ENDICOTT,

Secretary of War."

On the 9th day of April the Attorney General wrote the following communication to the Secretary of War:

"DEPARTMENT OF JUSTICE,
WASHINGTON, April 9th, 1887.

SIR—In compliance with your request of the 5th inst I have the honor to return herewith the papers referred to therein relating to certain lands at Sault Ste. Marie, Mich., which it was contemplated to purchase for the purpose of a new site for Fort Brady.

In connection with this matter, I also transmit an account

of the U. S. Attorney for the Western District of Michigan, for professional services rendered in the investigation of the title to the lands above mentioned.

I am sir very respectfully,

A. H. GARLAND,

Attorney General."

The Secretary of War.

On April 16th 1887, the Secretary of War resubmitted the papers to the Attorney General, asking for his opinion as to the validity of the title. In this letter he asks "whether there is sufficient agreement in writing to bind Mr. Ryan, notwithstanding his attempted withdrawal from his agreement."

Rec., p., 23.

On May 18, 1887, the Attorney General again returns the papers to the Secretary of War, with his written opinion that the deed from Ryan and wife is sufficient to pass the title to the United States, provided nothing affecting the title has transpired since signing the deed. In this opinion the Attorney General said: "Upon examination of these papers I find that a valid title to said land (*i. e.* the premises hereinbefore described is thereby deduced to Thomas Ryan of that place (Sault Ste. Marie), and I am of the opinion that the accompanying deed of conveyance, from him and his wife to the United States, dated December 18th, 1886, which is offered for the acceptance of the Government, is sufficient to pass a valid title to the premises, assuming, of course, that nothing affecting the title to the property has transpired since the date of the deed. Information on this point should be obtained before *completing the purchase*, by having the searches for liens, incumbrances, etc., continued down to the present time."

See Rec., p. 34.

On May 19, 1887, the Attorney General wrote as follows to the United States Attorney at Grand Rapids: "Sir: I transmit herewith a deed of Thomas Ryan and wife, dated December 18th, 1888, granting to the United States certain property at Sault Ste. Marie, Mich. You are hereby instructed to continue the search for liens, incumbrances, etc., against this property from the date of the deed down to the present time, and should the title be found to be unaffected thereby and to remain unchanged, you are instructed to have the deed recorded, after which payment of the purchase money will be made in the usual way through the War Department."

On the 28th day of May, 1887, the United States Attorney wrote to the Attorney General a letter in which, amongst other things, he states as follows: "I found that on the 4th of April Thomas Ryan and wife deeded to the village of Sault Ste. Marie, a strip of land 40 feet wide off the east side of the southwest quarter of the southwest quarter of section 6, and 40 feet off the west side of the southeast quarter of the southeast quarter of section 1, making a strip 80 feet wide for street purposes. I hereto attach a slip with the land marked out, showing you what has been done to affect the title to the land. Notwithstanding all this, I recorded the deed running to the United States.

Perhaps I should explain further. Since this land was contracted to the government, a very remarkable business boom has struck Sault Ste. Marie, and Mr. Ryan claims that the land deeded to the government is worth fifty or sixty thousand dollars. He has made a claim that the government was dealing with the expectation of purchasing it, and assuming that it had not been accepted as yet, but was under consideration by the government, while I supposed you had accepted his offer to sell the land for $12,000.

This being the situation, I took the responsibility of recording the deed, notwithstanding that 80 feet had been deeded away, thinking that it would be the safest way to secure the government, as the property is unquestionably worth more than $12,000, although the conveyance of the street should be valid.

There is no doubt that the village officers knew of such contract when made, and no doubt exists in my mind but the village officers prefer that the government should own this property.

The facts seem to be that Thomas Ryan had other lands adjoining this, or in the vicinity, which he had sold for fabulous prices, and he has no doubt promised to other parties the opening of this street, and in pursuance of this fact has made this deed.

As this now stands, the title of the land is in the government, except only that Ryan has conveyed away this 80-foot strip. I shall be pleased to take any steps that may be directed it this matter."

On June 24, 1887, the Lieutenant General recommended "that the ground be not purchased until the 80 feet right of way referred to, be given up by the village." On the 28th day of June, 1887, the recommendation of the Lieutenant General was approved by the War Department, and the papers referred to Col. Poe, Chief of Engineers, to ascertain if the village would relinquish the strip 80 feet wide.

Rec., pp. 26, 35.

On July 27, 1887, Col. Poe wrote the War Department that "from the present outlook, it is hopeless to expect favorable action by the present village council on the request for reconveyance of the strip of land mentioned."

Rec., p. 35.

No tender was ever made of the purchase price until May 22, 1888.

Rec., p. 38.

On the 16th of June, 1883, James R. Ryan and wife deeded ten acres of the premises in question to Remegius Chartier, S. J., as trustee. The deed recites that "the said above described parcel of land to be forever the property of the Fathers of the Society of Jesus, for the purposes of education and other works, etc."

On November 26, 1886, the said Remegius Chartier quit-claims, in consideration of one dollar, said ten acres to said James R. Ryan, who in turn deeds to Thomas Ryan, the plaintiff in error.

See Rec., pp. 50-51.

On September 20, 1887, Mr. Ryan presented a petition to the President, asking for a return of his papers. The President, upon due consideration, directed the government to commence an action of ejectment, for the purpose of having the question in dispute settled by the courts.

In pursuance of such instructions, an action of ejectment was begun June 8, 1888, and the cause was tried before Judges Severens and Sage, at Marquette, July 17, 1889. The court instructed the jury that upon the evidence in the case, they should render a verdict for the plaintiff.

Rec., p. 49.

The plaintiff in error insists that the court below erred.

First—In directing the jury to render a verdict for the United States.

Second—In refusing to charge the jury to render a verdict for the defendant below.

Third—In not at least submitting the case to the jury,

on the question of intent, as to the delivery of the deed to the United States.

Fourth—In not excepting, under the charge in favor of the United States, the ten acres of land, deeded by James R. Ryan, to Remegius Chartier, in trust for the Society of Jesus.

I.

The theory of the counsel for the government, on the trial of this cause, and the opinion of the court was to the like effect.

First—That a valid binding contract, good under the Michigan Statute of Frauds, was entered into between Mr. Ryan and the government, and

Second—The contract being binding upon both parties, the delivery of the deeds, for examination and approval, could not be recalled by Mr. Ryan.

If there was a valid binding contract, it must be found in the telegram of Cady to Ryan, dated Sept. 7, 1886; Ryan's answer of the same date; the offer made by Cady, date Sept. 8; the recommendation of the president of the board, dated Sept. 9; the approval by the Acting Secretary of War, dated Sept. 11; and the notice of the president of the board, dated Sept. 11; all printed on pages 8 and 9, of the record.

All that followed was but in part execution of what had taken place, and cannot aid in creating a contract, if one did not already exist.

The Michigan Statute of Frauds reads as follows:

"Every contract for the leasing for a longer period than one year, or for the sale of any lands or any interest in lands,

shall be void, unless the contract, or some note or memorandum thereof, be in writing, and signed by the party by whom the lease or sale is to be made, or by some person thereunto by him lawfully authorized by writing."

Howell's Statutes, Sec. 6181.

The Supreme Court of that State in construing the statute, has held, that the agent must have written authority to enter into a binding contract. If not so authorized, then there must have been some ratification by Mr. Ryan of the unauthorized act of Cady.

This ratification, if not made in writing, with due knowledge of the circumstances, could only be made out by such conduct on Ryan's part as would equitably estop him from insisting on his rights. And such an estoppel would not be made out unless the government had been so far misled by Ryan, to its own prejudice, that justice demanded protection against him.

Palmer vs. Williams, 24 Mich., 334.

Neither can the delivery of the deeds aid in making valid an invalid contract in any way.

Kelsey vs. McDonald, 76 Mich., 188, and cases cited.

In view of those cases, look at the correspondence which it is claimed constituted a binding contract.

Cady, by telegram, asks Ryan to telegraph to him the price of two quarter sections of land for Fort Brady.

No township or range is given.

Ryan answers: "Twelve thousand dollars."

Acting upon these two telegrams alone, and having no opportunity for oral consultation, even if that would have aided, Cady addresses a communication, "To the Hon. the

Board of Survey, Sirs: I am instructed by Mr. Ryan to offer, etc."

First. Mr. Cady had *not been so instructed.* He had no authority whatever to make such an offer.

Mr. Thomas Ryan was not at that date the owner of this land, nor any part thereof, nor did he have any interest therein.

Second. The president of the board then telegraphs the Adjutant General that the board recommends for purchase the two adjoining forty-acre tracts on the hill, etc.

This recommendation General Drum, Acting Secretary of War, approves.

The recommendation of the board did not, nor did the approval of the Acting Secretary, or Acting Adjutant General sufficiently describe the land, parol testimony would be necessary to show that the lands referred to by the board are the lands in question.

This, under our statute of frauds, cannot be done, the contract "must be complete in itself and leave nothing to rest in parol."

Gault vs. Stormount, 51 Mich., 638, and cases cited.

The Acting Secretary of War and Adjutant-General had only the recommendation of the board before them, they approved of that and nothing else; that recommendation with their approval constituted the contract, if it could be called such, on the part of the Government. It was incomplete and could not be aided by parol testimony.

The board then notify Mr. Ryan that his proposal for the sale of certain lands has been accepted.

We repeat that in all this correspondence the only act of Thomas Ryan is his telegram of Sept. 7.

Ryan has not, nor has any agent, *authorized in writing by him*, added to that telegram in any way.

We respectfully submit therefore, that taking this entire correspondence of Sept. 7 and 11 inclusive, it does not

First—Show a valid binding agreement, even if Cady had been authorized in writing to make the offer, and

Second—That Cady not having been authorized in writing, the acceptance by the Government, of an unauthorized offer, was not binding on Mr. Ryan.

Third—That Ryan did not ratify in writing, Cady's unauthorized offer, and that his conduct then and afterwards, did not equitably estop him from insisting upon his legal rights.

Neither Mr. Ryan nor the Government considered that a binding contract had been entered into.

First, Mr. Ryan delivered two deeds for examination, one in accordance with the offer of Cady, the other containing a new reservation.

Second, He recalled the deeds April 1st, 1887.

Third, He afterwards conveyed to the village of Sault Ste. Marie a strip of this land for street purposes which was accepted by the village authorities and work was done thereon.

That the Government did not.

First, The action of the Secretary of War and Attorney General on receipt of the letter from Brennan & Donnelly, acting for Ryan, asking a return of the papers.

Second, The recommendation of the Lieut. General that the ground *be not purchased*, until the eighty foot right of way be given up by the village.

Third, The approval by the Secretary of War of this recommendation, June 28, 1887 (Rec., p. 26).

The action of the department is in strict accord with the uniform practice of the departments of the Government.

It is well known, more especially in the selection of post-office sites, that after the selection and approval by the department of a site, and while abstracts and conveyances are being examined, a reconsideration of the selection is frequently ordered and another site chosen. This is done in the interests of the government, without the consent of the owners of the land first selected, and the right so to do has, we think, never been questioned. All of these selections are made upon written proposals, more or less perfect, accepted in writing by the head of the proper department.

The preparation of abstracts and title deeds and forwarding the same for examination follows. If the abstract shows a good title and the deeds are correct in form, must the government complete the transaction? We respectfully submit such has not been the practice.

There must be an acceptance by the Secretary of War, before a proposal can become a binding contract.

See language of court in *Gilbert & Secor vs. U. S.*, 8 Wall., 361, where a proposal had been rejected by the Secretary of the Navy, and the court asks, "When did they renew them,?" and the court intimates that the rules which govern agreements between individuals, should in this class of cases.

In *Parish vs. U. S.*, 8 Id., 489, proposals for furnishing ice, were advertised for, by surgeon of military department, under instructions of surgeon general.

Proposals were accepted, and a contract made, not to be binding until accepted by surgeon general. The surgeon general approved the same, but before the other party received it, the secretary of war recalled it, and another draft was prepared in its place.

This, the other party executed under protest.

The court said, p. 490, that until the approval of the secretary of war, the action taken was merely initiatory to a contract. That Magruder, the surgeon who signed same, etc., could not bind the United States, in any way.

In *Filor vs. U. S.*, 9 Wall., 45, where the assistant quartermaster, assuming to act on behalf of the United States, leased certain docks, property and machinery, this agreement was approved by the commanding officer, at Key West, but was not approved, or disapproved by the Quartermaster General, until February 8, 1886, after the expiration of the lease.

Held, the lease was not binding on the government, until approved by Quartermaster General.

The Sibley Tent case: *U. S. vs. Burns*, 12 Wall., 251. The court said, though such contracts are usually negotiated by subordinate officers, or agents of the government, they are in fact and in law, the acts of the Secretary, whose sanction is essential to bind the United States.

See also U. S. vs. Adams, 7 Wall., 477.

Waiving, for the present, Cady's want of authority, the contract, if such it can be considered, is wanting in that mutuality which is essential to its validity.

Wilkinson vs. Heavenrich, 58 Mich., 574.
Richardson vs. Hardwich, 106 U. S., 252.

In addition to the other objections heretofore urged, we add:

It is only by implication, or the addition of parol evidence, that we can say the government was a party to this transaction at all.

The unauthorized proposition made by Cady, Sept. 8, is not an offer to sell to the government, nor even for the purpose of the building a fort thereon.

It requires a great stretch of imagination to say that the address of this proposition to the Hon. Board of Survey means the U. S. government.

Commencing with the proposition of Sept. 8, there is not a word in all that follows showing that the United States was purchasing this land at all, or that it was for fort purposes.

II.

THE TRUST DEED TO REMEGIUS CHARTIER.

June 16, 1883, James R. Ryan and wife conveyed to Remegius Chartier ten acres of lands in question.

The deed contained this clause:

"The said above described parcel of land to be forever the property of the *Father of the Society of Jesus* for the purposes of education and other works, *in accordance with their constitution*, with power to sell and dispose of the same to accomplish the same ends in case circumstances should require it."

The express trust created by this deed was unquestionably valid, under *Sec. 5573, 2 Howell's Statutes, subd. 5.*

"Express trusts may be created for any or either of the following purposes."

5th. "For the beneficial interest of any person or persons, when such trust is fully expressed and clearly defined upon the face of the instrument creating it, subject to the limitations as to time prescribed in this title." (Sec. 5573.)

And the power of sale contained in this deed, removed any objection that might otherwise have arisen under our statute of perpetuities.

Thatcher vs. St. Andrews Church, 37 Mich. 270–1.

Palms vs. Palms, 68 Mich., 355.

The land described is to be "the property of the Fathers of the Society of Jesus, for the purposes of education and other works, in accordance with their constitution."

This language clearly implies a corporation or organized society.

If a corporation, the Michigan statute, that when a religious society becomes incorporated, under its provisions the trustees "may take into their possession and custody all the temporalities of such church, congregational or society, whether the same shall consist of real or personal estate, and whether the same may have been given, granted or devised, directly or indirectly, to such church, congregation or society, or to any other person or persons for their use."

In *Methodist Church of Newark vs. Clark*, 41 Mich., 739, the Supreme Court said: "Under the operation of this statue (just given), and the provision in the statute of uses in section 4116 of the Compiled Laws, if the land in dispute was held in trust for this society at the time it became incorporated, the title passed immediately to the corporation, and the trustees no longer retained any legal interest in or any control over it." Citing authorities.

But even if the Fathers were not an incorporated society, the result would be the same under section 4116, which is *Sec. 5565, 2 Howell's Statutes*, and is as follows:

"Any person who, by virtue of any grant, assignment or devise, now is, or hereafter shall be, entitled to the actual possession of lands, and the receipt of the rents and profits thereof, in law or in equity, shall be deemed to have a legal estate therein, of the same quality and duration, and subject to the same conditions as the beneficial interest.

Under this statute, the title therefore passed to the Fathers and the trustee. Chartier "no longer retained any legal interest in, or any control over it."

Remegius Chartier, the trustee, had, therefore, no power or authority to convey this property to James R. Ryan, Nov. 26, 1886.

Rec. p., 51.

The title was in the *cestui que trust*, and Chartier, as trustee, had no interest in it, nothing to convey.

There is, however, still another fatal objection to this conveyance. The trust, as expressed in the instrument, is for charitable purposes, and is valid.

Section 5583, 2 Howell's Statutes, is as follows:

"When the trust shall be expressed in the instrument creating the estate, any sale, conveyance, or other act of the trustees, in contravention of the trust, shall be absolutely void."

The court below was of opinion, that this statute, "simply means that it shall be voidable at the election of the party, who is in a position to complain of it."

It is respectfully submitted that where a statute declares a conveyance, in violation of a trust, "absolutely void," it is a great stretch of judicial construction to say this means, voidable at the election of the *cestui que trust* only.

In *Pierce vs. Grimley*, 43 Northwestern Rep., 932, the late *Mr. Justice Campbell*, speaking for the Supreme Court of Michigan, said: "Where the trust appears on the face of a deed, it is notice to any one of the trustee's character and duties; and it is declared by statute, that any deed in violation of such a trust, shall be held absolutely void. *How. Stat., Section 5583.*"

It is submitted that a defendant, in ejectment, could take advantage of this want of power in Chartier, to convey, as the plaintiff, even as against a trespasser, must recover on the strength of its own title, and defendant may always show

title in a stranger, to defeat the plaintiff, as in Michigan, the action of ejectment is not only a possessory one, but also an action for the determination of the title.

Bringhurst vs. G. R. & I. Co., 44 N. W. R., 414.
Doolan vs. Carr, 125 U. S., 618.
Reynolds vs. Iron Silver Mine Co., 116 U. S., 678-698.

The plaintiff was not, therefore, entitled to a verdict, declaring that it was the *owner in fee* of the ten acres of land, conveyed in trust, to Chartier.

In *Bringhurst vs. G. R. & I. Co.*, 44 N. W., 414, decided by the Supreme Court of Michigan, it was held, that under Howell's Statutes, Michigan, §§ 7795–7797–7815, requiring a verdict, in ejectment, to follow the declaration as to the description of the premises, and the extent and quality of the estate claimed, a verdict for the whole of the premises claimed, where only an undivided one-half interest is shown, defendant not being in possession, as an intruder, is erroneous, and a new trial was granted.

Of what benefit is it to the government to say that Ryan cannot raise this question, but that after the government has paid for it, and erected a fort thereon, that the *cestui que trusts* may then come in and raise it.

III.

Ryan, after recalling his deeds from the government, conveyed to the village a strip of land eighty feet through the center of the lands in question for street purposes.

The village accepted the land, and performed work on the street.

The Lieutenant General and Secretary, on this account, declined to complete the purchase.

The city quit-claimed its interest in this land to the government, May 22, 1888, when a tender was made to Ryan.

The United States took no interest by the quit-claim from the city of Sault Ste. Marie. The only title the city had was a public assessment, which could not be destroyed except by a resolution of the council, appointing a time, not less than four weeks, when objections could be heard, etc. This proceeding was not had.

Howell's Statutes, Sec. 2623.

IV.

AS TO THE DELIVERY OF THE DEED.

As in Michigan an equitable title cannot be tried in an action of ejectment, the foregoing discussion of the question of a binding contract that could be enforced in equity has a bearing only on the question of the delivery of the deed, and of the right of the government to retain possession of the papers. No matter what the previous facts may have been, that the delivery and acceptance of the deed were essential to pass the title, will not be disputed.

The government, as before stated, could at any time decline to accept, with or without cause; any other course would be dangerous in many cases for the government, and while the custom of the department may not be law, that custom undoubtedly is that the government has the right to recede at any time before formal acceptance.

WAS THE DELIVERY OF THE DEED TO THE UNITED STATES ABSOLUTE?

In order to have been an absolute delivery it must have been so accepted by the United States as absolute and binding at the time of its reception. The facts in the case, however, contradict this.

Ryan testified that he made two deeds, because he did not know which one the government would finally take.

Ryan's Test., p. 42.

He gave the deeds to Cady on the understanding "that it was simply for examination, and not to pass away without the money."

Rec., p. 42

Section 22 of General Order No. 47, required the deed to be delivered for examination.

Rec., p. 14.

The fact that the Lieutenant General, on June 24, 1887, "recommended that the ground be not purchased, unless the 80-foot strip be given up by the village," and that such recommendation was approved by the War Department, on the 28th of the same month, shows that the United States did not think that the purchase was then made, or that the deed was accepted.

Rec., p. 26.

The title to real estate cannot be in abeyance. In the present case it must either have been in Ryan or the United States, while the deeds were held for examination and approval.

The title certainly could not have been in the United

States, as the deeds could have been rejected for any cause which would end the matter, and a reconveyance to Ryan would not have been necessary.

It has been distinctly held that delivering a deed for examination, to see if satisfactory, it being understood that it might be necessary to alter or correct it, was not a delivery.

Wadsworth vs. Warren, 12 Wall., 314.

A deed delivered for examination does not transfer the title to land; such papers are not operative as conveyances until the examination is made, and they are found correct, or if imperfect, corrected.

Graves vs. Dudley, 20 N. Y., 79.
3 Washburn, 262.
Parker vs. Parker, 1 Gray, 411.
Murdoch vs. Gilchrist, 52 N. Y., 242.
Eggleton vs. Wagner, 46 Mich., 620.

The question of delivery is fully discussed in *Tuft vs. Tuft*, 59 Mich., 185, wherein the court say "cases not unfrequently arise where a deed is handed to a grantee for inspection by himself or his counsel, or for some temporary purpose, where there is no completion of the transfer." ※

The material inquiry is when did the minds of the parties meet in regarding the deed as unconditionally delivered and accepted, so that both parties would be bound.

McCullough vs. Day, 45 Mich., 534.
Martz vs. Eggeman, 44 Mich., 430.
Patrick vs. Howard, 47 Mich., 40.
Hyne vs. Osborne, 62 Mich., 235.

Record of a deed is not conclusive of its delivery.

Hendricks vs. Rasson, 53 Mich., 575.
Stevens vs. Castel, 63 Mich., 111.

※ See also Pennington vs. Pennington, 75 Mich. 600, where the Court hold that until a deed is delivered to the grantee to become presently operative, the grantor retains the right to rescind or recall it.

In the case at bar, recording the deed is not only no evidence of delivery, but it is evidence of bad faith, of a violation of the instructions given to the United States Attorney by the Attorney General, and of an utter disregard of the rights of Mr. Ryan.

There could have been no acceptance until after the 18th of May, 1887, when the Attorney General passed on the title.

We also insist that under the provisions of the United States Revised Statutes, Sec. 355, which provides as follows:

"No public money shall be expended upon any site or land purchased by the United States for the purpose of erecting thereon any arsenal, fort, etc., until the consent of the Legislature of the State in which the land or site may be, to such purchase has been given," that the purchase could not be made without the consent of the State of Michigan. That consent was not given.

Rec., p. 46.

The general act referred to by Mr. Kingsley, counsel for the United States in the court below, does not touch sites for forts.

If there was no binding contract between the parties, the defect cannot be supplied by the deed.

A deed delivered for examination cannot be used as a contract or a memorandum so as to take the case out of the statute of frauds.

Devlin on Deeds, 273, and cases there cited.
Kelsey vs. McDonald, 76, 188.

In the court below the counsel seemed to lay stress upon a dictum of Lord Mansfield in the case of *Roberts vs.*

Wyatt, 2 Taunt., 267. The question involved in that case was trover for an abstract of title, and all that Lord Mansfield held was that whilst negotiations were pending under a valid contract, the vendee had a right to the possession of the abstract, to apply such a rule to the case at bar would be begging the question.

We trust we have shown:

1. That there was no contract between the parties valid under the statute of frauds of the State of Michigan.

2. There was no mutuality in the alleged contract.

3. That the papers were submitted merely for inspection to the United States, and not to pass the title to the land in question.

4. That until an actual delivery and acceptance, either party could terminate the negotiations, and that Mr. Ryan actually did terminate them.

5. That the United States acquired no legal title to the land in question. There are no equities in the case in favor of the United States, as its own property increased in value in a greater ratio than Mr. Ryan's.

We therefore respectfully ask that the judgment of the Circuit Court be reversed, and a new trial granted.

MICHAEL BRENNAN,
JOHN C. DONNELLY,
ISAAC MARSTON,
Counsel for Plaintiff in Error.

In the Supreme Court of the United States.

OCTOBER TERM, 1889.

THOMAS RYAN, PLAINTIFF IN ERROR
vs.
THE UNITED STATES.
No. 1307.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MICHIGAN.

BRIEF FOR THE UNITED STATES.

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vs.
THE UNITED STATES. } No. 1307.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MICHIGAN.

BRIEF FOR THE UNITED STATES.

The statement which appears in the brief for the plaintiff in error does not include in it some facts which are regarded as important in supporting the judgment of the circuit court, but it is deemed sufficient to call attention to these in the course of the argument rather than to group them together in a separate statement at the beginning of this brief where their bearing upon the questions involved in the case would not be so apparent.

The errors assigned by counsel for the plaintiff in error are:

First. That the circuit court erred in directing the jury to render a verdict for the United States.

Second. In refusing to charge the jury to render a verdict for the defendant below.

ARGUMENT.

I.

ON THE UNDISPUTED FACTS OF THE CASE, AND THE LAW APPLICABLE TO THEM, THE DEED OF THOMAS RYAN AND WIFE WAS DELIVERED BY THEM TO THE UNITED STATES, BY WHOM IT WAS ACCEPTED, AND A COMPLETED TRANSFER OF TITLE WAS HAD BEFORE SUIT BROUGHT.

A.

1. *There was a valid binding contract, good under the Michigan statute of frauds, entered into between Ryan and the Government.*

The Michigan Statute of Frauds contains the following (Howell's Annotated Statutes):

> §6181. SEC. 8. Every contract for the leasing for a longer period than one year, or for the sale of any land, or any interest in lands, shall be void unless the contract, or some note or memorandum thereof, be in writing and signed by the party by whom the lease or sale is to be made, or by some person thereunto by him lawfully authorized by writing.

The act of Congress approved July 8, 1886, section 4, provided as follows:

> That the Secretary of War is also authorized to purchase grounds in or near the village of Sault

> Sainte Marie, suitable and sufficient for fortifications and for garrison purposes, and construct thereon the necessary buildings, with appurtenances, sufficient for a four company military post, to be known as Fort Brady, in accordance with estimates to be prepared by the War Department; and a sufficient sum of money, not exceeding one hundred and twenty thousand dollars, is hereby appropriated out of any money in the Treasury not otherwise appropriated, to enable the Secretary of War to comply with the provisions of this act: *Provided*, That the title to lands authorized to be purchased under the fourth section of this act shall be approved by the Attorney-General.

By Special Order, No. 186 (Rec., p. 6), issued by direction of the Secretary of War, a board of four officers, selected from the Army, was appointed to meet at Fort Brady, Mich., on Tuesday, September 7, 1886, for several purposes therein specified, the first of which was "to select for purchase the suitable and sufficient grounds indicated in the fourth section of" the act approved July 8, 1886, above quoted. In the same order this board of officers was directed to report by telegraph to the Adjutant-General with its recommendation, for the approval of the Secretary of War, so soon as it should have selected the new site.

The record (pages 8 and 9) shows the following communications:

> SAULT STE. MARIE, *Sept.* 8, 1886.
>
> To the hon. THE BOARD OF SURVEY:
>
> SIRS: I am instructed by Mr. Ryan, to offer the SW. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of sec. 6, and the SE. $\frac{1}{4}$ of the SE. $\frac{1}{4}$ of sec. 1 (both in towns 47 N., of R's 1 E. and

W.), containing eighty (80) acres, more or less, if sold together, for the sum of twelve thousand dollars ($12,000).

* * * * *

THOMAS RYAN.
By W. B. CADY.

P. S.—The above offer is subject to the opening of Easterday avenue along the south line.

FORT BRADY, MICH., *Sept.* 9, 1886.

ADJUTANT-GENERAL OF THE ARMY,
Washington, D. C.:

The board recommends for purchase the two adjoining forty-acre tracts on the hill, half mile due south of west end of canal, divided through the center of length by meridian of Sault Ste. Marie, aggregating about seventy-five acres; price, twelve thousand dollars.

Very respectfully, your obedient servant,
HENRY L. ABBOT,
Lt. Col., Corps of Engineers,
President of Board of Officers.

The endorsement on the above is as follows:

WAR DEPARMMENT, *Sept.* 11, 1886.

Under ordinary circumstances, action in this case would have been deferred until the return of the Secretary of War or the Lieutenant-General.

In view, however, of the importance of the selection of this site, and of the fact that inaction here would delay further action by the board, which is now in Michigan awaiting reply, the recommendation of the board as contained in the within telegram is approved. The board will be advised by telegraph of such approval.

R. C. DRUM,
Act'g Sec'y War.

HEADQUARTERS OF THE ARMY,
ADJT. GEN. OFFICE, WASHINGTON,
Sept. 11th, 1886.

Lieu. Col. H. L. ABBOT,
Sault Ste. Marie, Mich.:

Despatches nine (9) and eleven (11) instant received. The Secretary of War approves the recommendation of board for purchase of two (2) tracts designated at the price of twelve thousand dollars ($12,000). Acknowledged receipt. No further instructions.

J. C. KELTON,
Acting Adjutant-General.

FORT BRADY, MICH., *Sept.* 11, 1886.

THOMAS RYAN,
Sault Ste. Marie Mich.:

SIR: You are hereby notified that the Acting Secretary of War has approved the recommendation of the board of officers now in session at this post, that your proposal, dated September 8th, 1886, be accepted, viz, for the sale of certain tracts of land described in your proposal as follows: The SW. $\frac{1}{4}$ of the SW. $\frac{1}{4}$ of sec. 6, and the SE. $\frac{1}{4}$ of the SE. $\frac{1}{4}$ of sec. 1, subject to the opening of Easterday avenue along the south line, for twelve thousand dollars.

Very respectfully, your obedient servant,
HENRY L. ABBOT,
Lieutenant-Colonel of Engineers,
President of the Board.

An examination of the foregoing leaves no doubt that by law the Secretary of War was authorized on behalf of the Government to purchase a new site for Fort Brady; that he directed the board of officers appointed, to select

such new site and to enter into negotiations for the purchase of the same; that Cady, on behalf of Ryan, made an offer in writing for the sale of land, which offer showed upon its face, first, the proposed grantee; second, the exact location of the land proposed to be conveyed; and third, the price at which it was to be sold, and which would, therefore, if duly authorized and accepted, be a sufficient compliance with the statute of frauds.

It is true that the United States is not mentioned in the offer, but the communication is addressed to "the honorable, the Board of Survey," and parol evidence would be admissible to show what the Board of Survey was. (Wood on Stat. Frauds, secs. 358 and 396; *Newell* vs. *Radford*, Law Repts., 3 Com. Pleas, 52.) The special order appointing the board shows that the board was acting on behalf of the United States, subject to the approval of the Secretary of War; from which it would necessarily follow, in construing the offer made by Cady for Ryan, that the offer was in fact made to the United States through the Board of Survey as its agent.

Was this offer accepted by the United States? Counsel for the plaintiff in error claim that it was not. It is manifest from the correspondence above quoted that the board of officers recommended the acceptance of Cady's offer, and that this recommendation was approved.

It is said the description of the property in the recommendation on which the approval was based was not sufficiently definite to satisfy the statute. The description in the recommendation was:

> The two adjoining forty acre tracts on the hill, half mile due south of west end of canal, divided

through the center of length by meridian of Sault Ste. Marie, aggregating about seventy-five acres; price, twelve thousand dollars.

It may be admitted it was not as full a description of the property to be purchased as was contained in Cady's offer, but it was plainly sufficient to enable the parties by extrinsic evidence, which neither contradicted nor added to it, to identify these two tracts described in Cady's offer, and to exclude any other land. And this the supreme court of Michigan has held to be sufficient (*Eggleston* vs. *Wagner*, 46 Mich., 610, 619.) It does not appear that there were any other adjoining 40-acre tracts, aggregating about 75 acres, which lay one-half mile due south of west end of the canal, which were divided through the center of their length by the meridian of Sault Ste. Marie. But even if the description in the recommendation might have applied to other lands as well as those offered by Ryan, there can be no doubt that it did apply to and would include the two Ryan tracts. It was therefore amply sufficient to give the board authority to finally accept the offer on behalf of the Secretary of War and the Government of the United States.

The question here is one not of the terms of a contract, but of the authority for the act of an agent. If, then, the language used is broad enough to include within its terms the act of the agent, it is a sufficient ratification of that act, although the terms of the ratification were such as included more than the agent's act.

It should be noted also that a subsequent approval by the Acting Secretary of the acceptance based on the offer exactly as made is shown by the record. This is apparent

from the letter of General Drum, while Acting Secretary of War, dated September 30, 1886 (Rec., page 11). In that letter General Drum says that the papers "on file show Mr. Ryan's address to be, Michigan Exchange Hotel, Detroit." The address of Mr. Ryan was evidently taken from the telegrams sent by Cady to Ryan, which must have been forwarded, as stated by Ryan in his supplemental petition to the Department (Rec., p. 31), and at the time of the writing of the letter of September 30, by General Drum, must have been on file in the Department with the other papers, including the proposal of Cady on behalf of Ryan. Whether, therefore, the original approval of the recommendation was sufficiently definite with respect to the description of the property or not, General Drum's letter of September 30, written by him as Acting Secretary of War, referring to the approval of the selection of the Ryan tract, and directing that proper steps be taken to complete the transfer of title, would be a second approval, based on the offer of Cady, exactly as it was handed to the board.

The last letter of the correspondence above quoted shows that the offer of Cady for Ryan was accepted by the board in the exact terms in which it was made. In so far, then, as the Acting Secretary of War could, on behalf of the United States, accept Cady's offer, he did it in the exact words of the offer.

The point seems to have been made below, although not referred to in the plaintiff's brief, that the approval of the Acting Secretary of War, Adjutant-General Drum, was not a compliance with the statute which authorized e Secretary of War to purchase the site.

In section 179, Revised Statutes, the President is given power, in his discretion, in case of the death, resignation, absence, or sickness of the head of any Department, to authorize and direct any other officer in said Department, whose appointment is vested in the President by and with the advice and consent of the Senate, to perform the duties of the vacant office until a successor is appointed, or the sickness or absence of the incumbent shall cease.

It is to be presumed in the absence of evidence to the contrary that General Drum, who was an officer of the War Department, had been duly appointed in place of the Secretary of War, during his absence, and was therefore authorized by law to perform the duties of the Secretary of War. The purchase of the site in this case was one of the duties of the Secretary of War which General Drum, as Acting Secretary, was therefore authorized to perform. The result is, that in so far as the Secretary of War had power to bind the United States to the purchase of a site for Fort Brady, that power had been exercised. By the fourth section of the act of July 8, 1886, he was given plenary authority to purchase a site on condition that the Attorney-General approved the title. This necessarily implies within it the authority to make a contract for the purchase of a site on the same condition.

His authority to make such purchase was, of course, also modified by and subject to the provisions of section 355, Revised Statutes, under which no public money could be expended for the site until the written opinion of the Attorney-General was had in favor of the validity of the title, and until the consent of the legislature of the State of Michigan had been given. These were provisions of

public law affecting every contract into which agents of the Government entered on behalf of the Government for the purchase of the land, and therefore were necessarily incorporated in the terms of the contract itself.

The consent of the State of Michigan to the purchase of this land had been already given in a general statute of the State of Michigan (2 Howell's Anno. Stats. of Mich., secs. 5202 and 5203), which are as follows:

> § 5202. SEC. 1. *The people of the State of Michigan enact*, That the United States of America shall have power to purchase, or to condemn, in the manner prescribed by its laws, upon making just compensation therefor, any land in the State of Michigan required for custom-houses, arsenals, light-houses, national cemeteries, or for other purposes of the Government of the United States.
>
> § 5203. SEC. 2. The United States may enter upon and occupy any land which may have been, or may be, purchased or condemned, or otherwise acquired, and shall have the right of exclusive legislation and concurrent jurisdiction together with the State of Michigan, over such land and the structures thereon, and shall hold the same exempt from all State, county, and municipal taxation.

The words "or for other purposes of the Government of the United States" certainly include land to be used as a fort, because, even if the principle is applied here that general words after an enumeration of particular things are to be construed as including other things of a similar kind, forts and arsenals are sufficiently alike to show that forts must be included in the general words.

It follows from what has been said, that the United States was bound, through the official action of the Acting

Secretary of War, by a contract to purchase the land here in suit from Ryan, on the one condition that remained to be fulfilled, namely, that the Attorney-General should give a written opinion in favor of the validity of Ryan's title.

The cases which counsel for the plaintiff in error cite (*Gilbert & Secor* vs. *U. S.*, 8 Wall., 361 ; *Parish* vs. *U. S.*, 8 Wall., 489; *Filor* vs. *U. S.*, 9 Wall., 45 ; *U. S.* vs. *Burns*, 12 Wall., 251 ; *U. S.* vs. *Adams*, 7 Wall., 477) to show that the Government was not bound by this contract are, when examined, strong authorities to show the contrary. Those cases were where the approval of the officer, who was given the power by law to make the contract, did not appear, and the acts of his subordinates without such approval were held not to bind the United States. Here, as we have shown, the person who was by law Secretary of War did approve the action of his subordinates in binding the Government to this purchase of this property.

It follows from what has been said that if Cady was authorized by Ryan to make the offer which he did make to the Board of Survey, the minds of the parties—that is, of the United States on the one hand, through the Secretary of War, and of Ryan on the other hand, through Cady—met in an agreement, on Ryan's part to sell, and on the Government's part to buy, the land which is the subject of this action ; and that all the terms necessary to a complete contract for the sale of land, namely, the names of the parties, the description of the subject-matter, and the price to be paid, were in writing, subscribed by the duly authorized agents of both parties, and that the Michigan statute of frauds has been complied with.

What has been said completely disposes of the argument of the counsel for the plaintiff in error, that Ryan could not be held to the contract, because the contract was not mutual, in that the United States was not bound by its terms. The recommendation of the Lieutenant-General, June 24, 1887 (Rec., p. 26), approved by the Secretary of War, that the ground be not purchased until an eighty-foot right of way therein referred to was given up by the village, has no bearing upon the question whether the United States entered into a binding contract to purchase Ryan's land, because the recommendation was based on Ryan's breach of the contract, by a conveyance to the village of a part of the land which he had agreed to convey to the Government.

CADY'S AUTHORITY.

There remains to be considered, therefore, the question whether Cady was authorized in writing, as required by the statute of frauds above quoted, to make the offer which he did make, and which was, as we have shown, accepted in writing by the duly authorized officers of the Government, on behalf of the Government.

Although the Michigan statute declares a contract for the sale of lands by an agent, whose authority is not evidenced by a note or memorandum in writing, to be void, it will probably not be disputed that the statute may be complied with as well by a subsequent ratification in writing of the act of the agent as by written authority first had. (*Holland* vs. *Hoyt*, 14 Mich., 228.)

It is claimed on behalf of the United States that Ryan gave written authority before the offer was made by Cady,

sufficient to take the case out of the statute of frauds, and also that Ryan subsequently ratified the act of Cady in making the offer by at least two writings. The telegram which Cady sent to Ryan before making the offer to the board and the answer which was received thereto are as follows (Rec., p. 8):

SAULT, *Sept. 7th*, 1886.

To Thomas Ryan, Michigan Exchange Hotel, Detroit, Mich.:

Telegraph price to me of southwest quarter of southwest quarter of section 6 and southeast quarter of southeast quarter of section 1 for Fort Brady. Answer immediately.

W. B. CADY.

DETROIT, *Mich.*, *Sept.* 7, 1886.

To W. B. CADY, *Soo:*

Twelve thousand dollars.

THOMAS RYAN.

It is clear upon authority that a contract made by telegram, to which the name of the party to be held is signed, is a sufficient memorandum to satisfy the statute of frauds. In this case it is not denied that Ryan signed and sent the telegram to Cady. He is bound by such signature exactly as if he had signed a letter to the same purport. (*Godwin* vs. *Francis*, Law Rep., 5 Com. Pl., 295; *McBlain* vs. *Cross*, 25 Law Times, New Series, 804; *Whaley* vs. *Hinchman*, 22 Mo. Appeals, 483; Reed on Stat. Frauds, sec. 339, and cases cited.)

In *McElroy* vs. *Buck*, 35 Mich., 434, a telegram which was introduced for the purpose of binding the defendant

was held an insufficient memorandum, because it did not contain enough to make a contract, but there seems to have been no question made by the court that if it had been sufficiently explicit the telegram would have had the same effect as a letter.

The connection between the telegram from Cady and the answer from Ryan is so plain upon the face of the two papers that no parol evidence is necessary to establish it. They appear to have been written upon the same day, the one from Cady, at Sault Ste. Marie, directed to Ryan, at Detroit, and the other from Ryan, at Detroit, directed to Cady, at Sault Ste. Marie. Ryan's telegram is, on its face, an answer to a question with reference to price, and Cady's telegram is such a question. Cady's telegram requests an immediate answer, and the date of Ryan's telegram shows that it must have immediately followed Cady's.

In the case of a correspondence, the reference made in one letter to another to so connect them as to justify the court's using them both as part of a written contract, need not be express, but it will be sufficient if the court can be satisfied from an examination of the documents that the one signed by defendant necessarily refers to the other. (Wood on Stat. Frauds, Sec. 369; *Western* vs. *Russell*, 3 Vesey and Beames, 187; and see *James* vs. *Muir*, 33 Mich., 223.)

But even if it should seem to the court that the connection between Cady's telegram and Ryan's answer is not so apparent as to justify the court in considering them together without parol evidence, parol evidence is competent to show that Ryan's telegram was in fact an answer to Cady's written request and to no other, and so must be

read in connection with it. It is no longer necessary, under the Statute of Frauds, for the signed paper to refer to any unsigned paper as such; it is sufficient to show that a particular unsigned paper, and nothing else, could be referred to, and parol evidence is admissible for this purpose. (Wood on Stat. of Frauds, Sec. 364; *Beckwith* vs. *Talbot*, 95 U. S., 389; *Salmon Falls Mfg. Co.* vs. *Goddard*, 14 How., 446; *Ridgway* vs. *Wharton*, 6 House of Lords Cases, 238; *Baumann* vs. *James*, 3 Chancery, 508; *Buxton* vs. *Rust*, Law Repts. 7 Exchq., 279; *Long* vs. *Millar*, 4 Com. Pl. Div., 450; *Cave* vs. *Hastings*, 7 Qu. B. Div., 125; *Shardlow* vs. *Cotteral*, 28 Chancery Div., 90; *Lerned* vs. *Wannemacher*, 9 Allen 416; *Work* vs. *Cowthick*, 81 Ills., 317; *Jenkins* vs. *Harrison*, 66 Ala., 345; *Whaley* vs. *Hinchman*, 22 Mo. Appeals, 483; *Patton* vs. *Rucker*, 29 Tex., 402.)

The cases above referred to are all cases where the object of introducing the unsigned paper was to show the completed contract—not the authority of the agent to make it; but certainly no stricter rule will be applied to proof of the written authority than to proof of the contract itself.

Reading Cady's telegram and Ryan's answer together, the next question which arises is whether they confer authority upon Cady to make the offer which he did make.

In determining what a completed written instrument means, whether it be a contract or an authority to an agent, parol evidence of the situation of the parties, and the surrounding circumstances, is admissible to aid in its

construction. No reason is apparent why the same rule will not apply in the construction of such instruments to determine whether they are sufficiently explicit to satisfy the statute of frauds. This conclusion is justified by authority. (Wood on Stat. Frauds, sec. 395; *Newell* vs. *Radford*, Law Rep., 3 Com. Pl., 52; *Monroe* vs. *Taylor*, 8 Hare, 56.)

It may therefore be considered in the construction of these telegrams that Cady was an attorney at law, who had acted for Ryan before (Rec., p. 7); that he had no relation to the United States, which, under the law was the only possible purchaser "for Fort Brady," and that both parties knew that the board of officers, appointed to select a site, was then in session. When Cady invited from Ryan an immediate statement of the price of the land "for Fort Brady," the words used, in the light of these facts, which are admissible to explain them (*Lyon* vs. *Pollock*. 99 U. S., 668), must be construed to be a request for the fixing of a price at which he might offer the land to the United States on Ryan's behalf, and Ryan's answer must be construed to be the fixing of a price for that purpose.

It is said that the description of the land in Cady's telegram is not sufficiently clear to take it out of the statute of frauds, because, while the number of sections and the exact part of the sections are correctly given, the township and range are not named. It is sufficient to satisfy the statute that the description of the real estate sold is full enough to enable it to be identified by parol evidence. (*Eggleston* vs. *Wagner*, 46 Mich., 610, 619.)

The act of July 8, 1886, itself defines what property

could be taken for Fort Brady, and shows that it must have been ground in or near the village of Sault Ste. Marie. In the absence of any evidence to show it, it is not to be presumed that Ryan owned in or near the village of Sault Ste. Marie two tracts of land in different townships and ranges which would answer the description "southwest quarter of southwest quarter of section 6, and southeast quarter of southeast quarter of section 1." It follows, therefore, that the land was sufficiently described. (*Eggleston* vs. *Wagner*, supra.; Wood on Stat. Frauds, sec. 396; *Stoops* vs. *Smith*, 100 Mass., 63; *Calkins* vs. *Hillman*, 101 Mass., 134; *Sweet* vs. *Shumway*, 102 Mass., 367; *Hart* vs. *Hammett*, 18 Vt., 127.)

RATIFICATION BY RYAN.

Ryan ratified the action of Cady in offering his land for $12,000 to the Government by acknowledging and executing a deed for the property to the United States, on the exact terms fixed by Cady in his original communication to the board. (Rec., pp. 17, 18.) This deed was handed to the officers for approval and acceptance, and bore the signature of Ryan. It is not disputed that it was a deed which the United States might have accepted immediately after its having been delivered by Ryan. It was, therefore, a ratification of Cady's act by Ryan in writing, because it was an attempted compliance by Ryan in writing with the terms of the contract made by his agent.

The fact that Ryan executed two deeds, one in exact compliance with the contract, reserving only a strip of land for Easterday avenue, and the other with a further reser-

vation of a strip of 33 feet on the south line of the tract, which latter deed the Government accepted, furnishes no ground for the argument either that the contract was not a binding contract finally entered into, or that the action of Ryan was not a ratification of Cady's offer. On the contrary, the execution of the two deeds was a written admission by Ryan to the United States that if it insisted, he was bound to convey according to the contract, and a statement that he would like to modify the contract by not deeding quite so much as the contract called for.

The reservation of the additional strip on the southern line of the tract was a concession to Ryan, and a departure from his contract, which the Government had a right to make if it chose. Because it has seen fit to make the concession of accepting the deed of less as a compliance with a contract for a deed of a little more, it can not be said to have released Ryan from his contract, or to have admitted that there was no such contract.

Counsel for the plaintiff in error cite the case of *Kelsey* vs. *McDonald* (76 Mich., 188), to show that the delivery of a deed correctly embodying an oral agreement for the sale of land would not be sufficient under the Michigan law to take the agreement out of the statute. The facts of the case cited show that it was not necessary for the court to decide the proposition which counsel advance as the result of the authority. The case presented called only for the decision that the delivery of a deed, which did not conform to an oral agreement for the purchase of lands conveyed, was not a sufficient memorandum to avoid the statute of frauds.

The court uses the following language:

> In the first place, it is conceded that the deed as executed and delivered did not embody the terms of the oral contract insomuch as it did not properly recite the price to be paid for the land. This of itself would be a sufficient answer to the claim that the execution of the deed and its delivery to Wetmore was a sufficient written memorandum to avoid the statute of frauds, if we were to admit that the execution and delivery of a deed correctly embodying the oral agreement would be sufficient to take it out of the statute, which we are not prepared to do.

The last remark of the court is plainly an *obiter dictum* It was not necessary to the decision of the case before it, and ought not to have the weight of authority, especially when it is opposed to well-considered cases. (*Lyon* vs. *Pollock*, 99 U. S., 668; *Jenkins* vs. *Harrison*, 66 Ala., 356; *Bowles* vs. *Woodson*, 6 Grattan, 78; *Thayer* vs. *Luce*, 22 Ohio St., 74.)

But, conceding the full effect claimed for this authority by counsel for the plaintiff in error, it is submitted that it does not affect the question here. Here was a written contract by Cady on Ryan's behalf, with the Government, which contract was not within the statute of frauds unless Cady had no authority in writing to act for Ryan. Ryan put himself in the position, by the execution and delivery of the deed, where it is not denied that the Government by immediate acceptance could have received the benefits of the contract made by his agent. That act was a ratification of the agent's entering into the contract, and was evidenced by the writing which Ryan delivered to the agents

of the Secretary of War for the purpose of having the Government accept it. There is a distinction between an unaccepted deed evidencing a contract which is oral, and its evidencing a ratification of a written contract entered into by an agent whose authority was oral.

In *Wood* vs. *Davis* (82 Ills., 311) the execution of a deed and the sending of it to an agent for delivery, though the agent did not thereafter deliver it, but only told the plaintiff of it, was said to be a sufficient note or memorandum of the authority of the agent to enter into a written contract for the sale of the lands in question, under a statute of frauds, which required, like the Michigan statute, that the authority of the agent should be in writing.

In the case of *Hanchett* vs. *McQueen* (32 Mich., 22), where the principal had endorsed the agent's duplicate copy of an unauthorized contract with the words "This is approved," and it was held that it was not a sufficient ratification to take the contract out of the statute of frauds, there was no evidence that the writing had ever passed beyond the control of the principal or had been communicated to the other contracting party, nor did it appear that any oral authority had in fact been given. In the case at bar the deed executed in exact conformity with the contract and which was (so far as Ryan was able to make it) a complete compliance with his contract, was delivered to the officers of the Government, and knowledge of its existence fully communicated to them by Ryan, with the necessary implication that it was for the purpose of complying with, and therefore of ratifying his agent's contract.

It is to be observed that there was a delivery here of more than the mere deed, for there accompanied the deed an order signed by Ryan authorizing the payment of the $12,000 purchase money to Cady & Cady, a firm of attorneys of which W. B. Cady was senior member. (See pages 17 and 21 of Record.) The deed thus handed over to the officers of the Government, with a direction to pay over to the very person as agent for Ryan who had entered into the contract on his behalf, is strong written evidence of the ratification by Ryan of Cady's acts as his agent. Moreover these two papers, the deed and the order, can be used in connection with the telegrams heretofore referred to to supply whatever of definiteness may seem to the court wanting in the latter.

In *Thayer* vs. *Luce* (22 Ohio St., 74) there was a memorandum signed by the parties not sufficiently explicit to take it out of the statute of frauds. A deed, in compliance with the contract, had been handed by the proposed grantor to the proposed grantee for examination, as the grantor's idea of what the contract was. It was held that the deed might be used with the memorandum to make a completed contract full enough in its terms to take the case out of the statute of frauds. Considering the telegrams, the deed, and the order together in this case, they present facts quite as strong as those of *Thayer* vs. *Luce*. See also *Jenkins* vs. *Harrison* (66 Ala., 356).

In September, 1887, after the deed from Ryan to the Government had been recorded by the district attorney, and after Ryan had demanded, without success, the return of the deed to him, he presented a petition and a supplemental petition to the President of the United States, re-

questing him to direct the cancellation of the deed, or a reconveyance of the property. (Rec., pp. 28, 29, 30, 31, and 32.)

In the petition he says that on the 9th day of September, 1886, and for a long time prior thereto, he was the owner in fee of the land involved in this controversy, describing it in full. He refers to and makes part of his petition the act of Congress which authorized the purchase of the new site for Fort Brady; details the appointment of the board to select the site; says that the board selected his property as a site at a price of $12,000, to be paid in cash, and that the action of the board was approved by the Secretary of War; that subsequently, and at the request of the War Department, he prepared a deed of the property and duly signed the same, and, together with an abstract of the title to the premises, deposited the same with the district attorney for the western district of of Michigan for examination only, and subject to such changes and modifications as the Government desired, and not as a final delivery which bound him to sell and convey, and the Government to buy the land and pay therefor, and that up to that time nothing had been done, either by the Government or him, which in law bound either party to carry out the negotiations for the purchase and sale of the property.

The first paragraph of the supplemental petition (Rec., p. 31) is as follows:

> That while absent from Sault Ste. Marie, and in the city of Detroit on business, he received a telegram from William B. Cady, Esq., dated September 7th, 1886, asking your petitioner what he would take for

the land described in said deed; that a copy of said telegram, as near as petitioner can recollect, is hereto attached, marked Exhibit "A;" that to said telegram your petitioner sent the following answer: "Twelve thousand dollars;" that on the following day said William B. Cady filed a proposal with the board of officers offering said land as a site for Fort Brady; that your petitioner is informed and believes said proposal is now on file in the office of the Secretary of War, at Washington, and that said telegram from your petitioner to said Cady is attached to the proposal so filed with the said Secretary of War; that on the 11th day of September he received from the president of the said board a communication with reference to said matter, a copy of which is hereto attached and marked Exhibit "B;" that afterwards he received from Lieutenant Col. O. M. Poe a communication with reference to said matter, a copy of which is hereto attached marked Exhibit "C;" that a copy of general order, No. 47, referred to in and inclosed with Exhibit "C," is hereto attached and marked Exhibit "D;" that a reply to Exhibit "C" was sent by said W. B. Cady, a copy of which is hereto attached and marked Exhibit "E."

The fourth paragraph of the same petition (Rec., p. 32) is:

> That the only authority and instruction that Cady had from your petitioner to act in his behalf was by parol.

The petition and supplemental petition are both signed and verified by Thomas Ryan.

It is confidently submitted that this petition, signed by Ryan, and delivered by him to the President as the representative of the United States, and as the superior of the

Secretary of War, is a note or memorandum in writing which, in connection with the papers which by reference are made part of it, would take the present case out of the statute of frauds of Michigan. It is a statement by Ryan in writing, addressed to the representative of the other party, that Cady who assumed to act and signed a written contract for the sale of the land, on his behalf, was in fact authorized by him by parol to do so.

The statute of frauds is a statute of evidence. If the party sought to be held has put into the form of writing, and has delivered to the other party or his agent before the bringing of suit, any signed admission which, when produced in court, will prove all the terms of an oral contract, or, as in this case, of an oral authority which would be within the statute, such written admission will take the case out of the statute, and the contract so evidenced will be enforced. And it is immaterial that, in this admission, the party sought to be held, denies or repudiates his obligation under the contract. (Reed on Stat. Frauds, sec. 394; *Shippey* vs. *Derrison*, 5 Espinasse, 191; *Bailey* vs. *Sweeting*, 9 C. B., N. S., 857; *Gibson* vs. *Holland*, L. R., 1 C. P., 407; *Wilkinson* vs. *Evans*, Law Repts., 1 C. P., 410; *Buxton* vs. *Rust*, Law Repts., 7 Exchq., 280; *McFarson's* Appeal, 11 Pa. St., 509; *Johnson* vs. *Trinity Church*, 11 Allen, 123; *Townsend* vs. *Hargraves*, 118 Mass, 325; Wood on Stat. Frauds, 360; *Drury* vs. *Young*, 58 Md., 546; *Barkworth* vs. *Young*, 4 Drewry, 13.)

It will be observed that the denials of liability on the part of Ryan contained in these petitions are denials based on the fact that the authority which Cady had from him was parol, and that while there is not an express admis-

sion that the parol authority covered Cady's acts, the implication that it did, arising from a detail of all the correspondence with which Ryan admits himself to have been familiar at the time it ensued, is so plain that no express admission of the existence of oral authority could be stronger. It will be noticed that he admits having received on the 11th of September the letter of the president of the board of officers notifying him that the acting Secretary of War had approved the recommendation of the board of officers to accept his proposal dated September 8th, 1886 (that is, his proposal signed by Cady in his name); that he afterwards received from Colonel Poe a similar reference to the acceptance of his proposal, and that after all this he signed and executed a deed for the property in accordance with the proposal, which he delivered to the officers of the Government for examination. When read in connection with these facts and admissions, the fourth paragraph of his supplemental petition, stating that the only authority and instruction that Cady had to act in his behalf was by parol, is plainly an admission that Cady was authorized by parol to enter into the contract, and satisfies the statute.

2. *The delivery of the deed by Ryan to the Secretary of War was continuing and was not revocable by Ryan because of the obligation of his contract, until the United States should have a reasonable time for the Attorney-General to approve the title.*

It is not disputed by counsel for the plaintiff in error that, if the Attorney-General had approved the title, and

the United States had accepted the deed before the revocation of Ryan, the delivery would have been complete. The contention is that the tradition was a mere offer to deliver, which was revocable before acceptance.

It is not contended, and Ryan does not testify, that he ever expected to have the deed returned to him, and then deliver it in form to some agent of the United States authorized to accept it. All that he says is, that he delivered it for examination to the United States attorney, and he leaves necessarily to be implied, that it was for examination and acceptance by the United States. This fact is conclusively shown by his attaching to the deed an order for the payment of the money to Cady & Cady. Had he expected a return of the deed before the completion of the transaction, he certainly would not have accompanied an experimental instrument with an order which could not but be final. Assuming then, for the purpose of this argument, that he handed the deed to the officers of the Government merely with the idea that it was a continuing offer to deliver until the Government should examine and accept it, if it saw fit, the question recurs, was it revocable? We answer, emphatically, that it was not.

It is fully admitted that an offer made by one party for the acceptance of another may be withdrawn by the one at any time before it is accepted by the other; but if the offer is made in accordance with an agreement to keep that offer open, under which consideration is received by the one making the offer, it is not revocable, and an acceptance by the other, at any time before the period agreed upon expires, binds the offerer, and no revocation

will prevent the binding effect of such acceptance. The present is an analogous case. There was no new consideration, moving to Ryan for the offer to deliver, but there was a binding obligation on him, growing out of the contract, to make such an offer, and to keep it open a reasonable time so that the United States might accept it. That obligation made any offer to deliver in execution of the contract, accompanied by a manual tradition of the deed, irrevocable, until such time had passed as in the law was reasonable for an acceptance. Nothing is said in the brief of counsel for the plaintiff in error opposed to this view of the case, if it be assumed that the contract is binding. It is not thought necessary, therefore, to dwell at length upon the correctness of the proposition that if there was a binding contract, the offer to deliver the deed, if it was such, could not be revoked, and an acceptance by the Government within a reasonable time completed the transfer of title.

There is no mystery about where the title was before acceptance by the Government. It was in Ryan until the completion of the transfer of title. It was not in suspense, and no theory upon which the Government relies for success in this case requires that it should have been. Whether the delivery of the deed by Ryan to the district attorney and the Secretary of War was simply a delivery for examination and acceptance, or was in fact a delivery in escrow, the title would still remain in Ryan in the one case until acceptance, in the other until the happening of the condition of the escrow.

3. *The facts of the case show that, as matter of law, only a reasonable time was consumed by the United States before Ryan was notified of the completion of the transfer, and was tendered the purchase price of the land.*

The time which the Government took for examination of the title was reasonable. The law required (sec. 355, R. S.) that the written opinion of the Attorney-General should be had in favor of the validity of the title before any money could be expended on the site, and the district attorney was required, upon the application of the Attorney-General, to furnish any assistance or information in his power in relation to the title.

The deeds and title papers were not delivered to the district attorney until January 3, 1887 (Rec., pp. 17, 18). Apparent defects in them made necessary additional evidence, which was not furnished until the middle of February (Rec., p. 20). Upon the 19th of March the district attorney reported favorably upon the title, and forwarded the title deeds to the Secretary of War (Rec., pp. 20, 21), who, on March 28, transmitted them to the Attorney-General for his written opinion in accordance with the statute. Three days after, on the 1st of April, Ryan attempted to withdraw his deeds and to escape from the obligations of his contract (Rec., p. 22). On the 4th of April, Ryan deeded away, for street purposes, a strip 80 feet wide through the entire length of the 75-acre tract purchased by the Government (Rec., pp. 26, 27). On May 18 the Attorney-General gave his written opinion that the deed from Ryan and wife was sufficient to

pass the title, provided nothing had been done by Ryan to affect the title since signing the deed, and the papers were returned to the United States attorney on May 19 to have the deed recorded, provided nothing had happened since the date of the deed to affect the title (Rec., p. 24).

The district attorney, on examination, discovered Ryan's quitclaim deed of the 4th of April, above referred to, but, notwithstanding this, he recorded the deed on the 25th of May, 1887 (Rec. p. 20). From that date until May 22, 1888, when the defendant was tendered the $12,000 purchase money by the United States (Rec. p. 38), the officers of the Government were occupied in attempting to persuade the village council of Sault Ste. Marie to quitclaim to the United States the 80-foot strip which Ryan had conveyed to them on the 4th of April. In this attempt they met with strenuous opposition from Ryan.

It is apparent from this statement of fact that the time taken by the United States to pass upon the validity of the title was only from the middle of February until the 18th of May, 1887, and that Ryan attempted to withdraw from his contract only three days after the papers had been submitted to the Attorney-General for his opinion.

The delay in the completion of the transaction from May, 1887, to May, 1888, was due wholly to the efforts of Ryan to escape from his contract, and it certainly does not now lie in his mouth to complain that the Government took more than a reasonable time to accept the deed, and to acquire their just rights thereunder.

B.

Whether there was a binding contract or not previous to the tradition of the deed by Ryan to the Secretary of War, such tradition was in fact a delivery in escrow to the officers of the Government, and was so accepted by the Government, to become effectual on condition that the title should be approved by the Attorney-General. On the happening of that condition the title vested, and neither by the will of the Government nor by that of Ryan could the deed have been recalled between the time of Ryan's delivery to the Secretary of War and the happening of the condition.

The evidence in the case was sufficient to justify the court in directing a verdict for the plaintiff by the jury on the ground that the delivery in this case was a delivery on condition in escrow to the Secretary of War, to be complete on the approval by the Attorney-General of the title. The action of the board of officers, and the approval of their action by the Secretary of War, the acceptance of the Ryan proposal, and the anxiety to complete the transaction which the correspondence of the War Department indicates, show beyond a doubt that it was the intention of the War Department to accept the deed delivered by Ryan on condition that the title was good. The delivery of the deed by Ryan to the district attorney, and the consent of Cady for Ryan that the deed should be sent to the Secretary of War to secure the approval of the Attorney-General, accompanied as it was by an order for the payment of money to Cady & Cady, leaves no doubt that it was the intention of Ryan that what was done at the time that Ryan transferred the deed

and title papers to the officers of the Government, was a delivery to take effect on condition that the title should be approved by the Attorney-General.

The minds of the parties met, therefore, in a delivery and acceptance on condition. Ordinarily, the rule is that delivery can not be made on condition by the grantor to the grantee; that no matter what the verbal condition on which delivery is had, if it is intended as a delivery, it is absolute. (Devlin on Deeds, Sec. 314.) Where, however, the grantee is a corporation, or an entity, like the United States, which must be represented by an agent, the technical rule which prevents a conditional delivery between the grantor and grantee does not apply, and the delivery to the agent on condition is a delivery in escrow, if it be understood between the parties that the delivery is to be effectual upon the happening of a condition. (Devlin on Deeds, 316; *Southern Life Insurance Company* vs. *Cole*, 4th Fla., 359; *Bank of Healdsburg* vs. *Bailhache*, 65 Cal., 326.)

There is nothing in the record, either in Ryan's evidence or in any of the correspondence, which tends to rebut the conclusions stated above, as to what was the real understanding upon which these deeds were delivered by Ryan to the district attorney and by him transmitted to the Secretary of War. Counsel for Ryan claim that the delivery was merely an offer to deliver, and that the United States might have accepted or rejected the offer. We contend that the delivery was in fact a conditional delivery, because it was accepted as such by the United States.

The real difference between the two claims is only then

as to the fact whether there was a present acceptance by the United States to take effect on the title's proving valid. It is not thought that there can be any doubt that it was the intention of the United States to accept the deed on condition that the Attorney-General approved the title. It follows that the deed was delivered in escrow to the agents of the United States to vest the title in the United States upon the Attorney-General's giving a written opinion that the title was valid. That he did, and the title vested.

It is beyond the power of the grantor or the grantee to revoke a delivery in escrow. They must await the happening or the non-happening of the condition on which the title is to vest. If the condition happens, *ipso facto* the title passes. That a deed delivered as an escrow can not be revoked by the grantor, but will take effect on the performance of the condition on which it was delivered, was expressly held in *Cannon* vs. *Handly* (72 Cal., 733).

II.

ON THE FOURTH ASSIGNMENT OF ERROR.

ASSUMING RYAN'S DEED TO THE UNITED STATES TO HAVE BEEN DELIVERED, AND TO HAVE MADE A COMPLETE TRANSFER, THE COVENANT OF GENERAL WARRANTY CONTAINED THEREIN ESTOPPED RYAN FROM DENYING THE TITLE OF THE UNITED STATES TO ANY OF THE PROPERTY THEREBY CONVEYED.

The fourth assignment of error is that the court erred

In not excepting, under the charge, in favor of the

> United States the 10 acres of land deeded by James R. Ryan to Remegius Chartier, in trust for the Society of Jesus.

The deeds upon which this assignment of error rests are to be found on pages 50 and 51 of the Record. The first deed, dated June 16, 1883, is from James R. Ryan and wife to Remegius Chartier, S. J., and to his successors and assigns forever for 10 acres included in the 80-acre tract here in suit. The second deed, dated November 26, 1886, is from Remegius Chartier, S. J., to James R. Ryan for the same 10 acres.

It is claimed by counsel for the plaintiff in error that the second of these deeds is void under the statutes of Michigan, and that as it occurs in the chain through which the United States must derive title, so much of its claim must fail at any rate.

The sections of the Michigan statute relied on are as follows:

> Section 5565. Any person who, by virtue of any grant, assignment, or devise, now is, or hereafter shall be, entitled to the actual possession of lands, and the receipt of the rent and profits thereof, in law or in equity, shall be deemed to have a legal estate therein, of the same quality and duration, and subject to the same conditions as the beneficial interest.
>
> Section 5583. When the trust shall be expressed in the instrument creating the estate, any sale, conveyance, or other act of the trustees, in contravention of the trust, shall be absolutely void.

It is said that under section 5565 the title to the 10 acres vested at once in the fathers of the Society of Jesus, the *cestuis que trust*, and that therefore any deed from Chartier

would not convey the legal title, and, further, that such deed, inasmuch as the trust appeared on the face of the deed, under section 5583 would be void.

The fourth assignment of error has no place in the discussion of this case, except on the assumption that the deed of Thomas Ryan and wife to the United States was legally delivered and took effect as a deed. The case presented, then, is this: The United States was granted by Thomas Ryan, 10 acres of land by deed, in which Ryan covenanted that he was lawfully seized of the land, that it was free from liens and incumbrances and that he would warrant and defend the title of the United States against all lawful claimants whomsoever. Ryan was in possession when he executed the deed. He refuses to give up possession to his grantee. The grantee brings ejectment, and on the trial proves Ryan's possession at the date of the deed, the delivery of the deed, and introduces it in evidence. Ryan then for defense puts in deeds for the property from himself to James R. Ryan, from James R. Ryan to Chartier, from Chartier to James R. Ryan, and from James R. Ryan to himself (record, page 41). On this proof Ryan claims that the deed from Chartier to James R. Ryan was void and conveyed no title to James Ryan; that, therefore, James R. Ryan's deed to himself conveyed no title, and, therefore, that his own deed, with its covenants, conveyed no title to the United States; wherefore the United States must fail in its action of ejectment against him. It may be that claims more audacious than this have been advanced in courts of justice, but they have not been frequent.

Ryan, on the plainest principles of law and morals, is estopped from defeating his own covenants by putting in evidence deeds to show that the title he conveyed and warranted to be a fee-simple was nothing. This is the simplest illustration of estoppel by deed. It is true that the United States must make out its own title, and can not succeed by the weakness of Ryan's title. But when it proves Ryan's possession and his deed, it makes a *prima facie* title in fee. (Tyler on Ejectment, page 541.) And Ryan, if he admits his deed and his covenants, is estopped to show title which shall defeat them. Some attempt is made in the brief of counsel for plaintiff in error to avoid the application of the doctrine of estoppel by showing that the action of ejectment in Michigan is more than a mere possessory action, and makes an issue of title. This is true. (*Kinney* vs. *Harrett*, 46 Michigan 90.) But how can that affect the application of the estoppel?

If the United States had any title to these 10 acres, it was a fee-simple. Ryan had covenanted that it had such a title. Is not the estoppel as broad as the covenant, and may it not prevent the defeating of a fee-simple title just as well as the right of possession?

This claim of invalidity in the Chartier deed is one which the *cestuis que trust* of Chartier might set up, or any stranger who had not warranted the title to the United States, but neither law nor morality will permit Ryan to give the lie to his own solemn covenants, or to make them ineffectual.

An examination of the Michigan authorities shows that the principle of estoppel has not been legislated out of the jurisprudence of Michigan, though one might suppose the

contrary from the argument on the fourth assignment of error on behalf of the plaintiff in error. (See *Shotwell* vs. *Harrison*, 22 Mich., 410; *Smith* vs. *Williams*, 44 Mich., 240, and *Case* vs. *Green*, 53 Mich., 616; see also *Van Rensselaer* vs. *Kearney*, 11 How., 297.)

The same doctrine prevents Ryan from taking any advantage of whatever defect there may have been in the quit-claim deed of the village of Sault Ste. Marie to the United States for the strip of land which Ryan conveyed to the village on April 4, 1887, in order to prevent the United States from carrying out the contract by which he was bound. In view of the plain operation of the doctrine of estoppel against Ryan it is not deemed necessary to consider the validity of the Chartier deed. On this point reference is simply made to the opinion of the circuit court (record, p. 49).

On the whole case, it is submitted that the direction of the circuit court to return a verdict for the United States was right, and that the judgment below should beaffirmed.

WILLIAM H. TAFT,
Solicitor-General.